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ABSTRACT

State legislators across the country have responded with new efforts to change the authority and practice of the juvenile and criminal justice systems. Since 1992, 48 of the 51 state legislatures (including the District of Columbia) have made substantive changes to their juvenile justice laws. This report presents the first comprehensive analysis of these changes, as both an explanation of the reform process and a guide to those preparing new initiatives. Telephone surveys of justice practitioners in every state provided information about the changes that occurred as a result of new laws. Five common themes have emerged from the legislative analysis. The report is organized around these themes: (1) jurisdictional authority; (2) judicial disposition and sentencing authority; (3) correctional programming; (4) confidentiality of juvenile court records and proceedings; and (5) victims of juvenile crime. In general, justice for a subset of juveniles now involves increased eligibility for criminal, rather than juvenile, court processing and adult sanctions. The prosecutor is gaining an expanded role in system responses as the judge has less authority. These and other changes are expected to have considerable impact on minority youth. Each chapter contains references. (Contains 10 figures.) (SLD)

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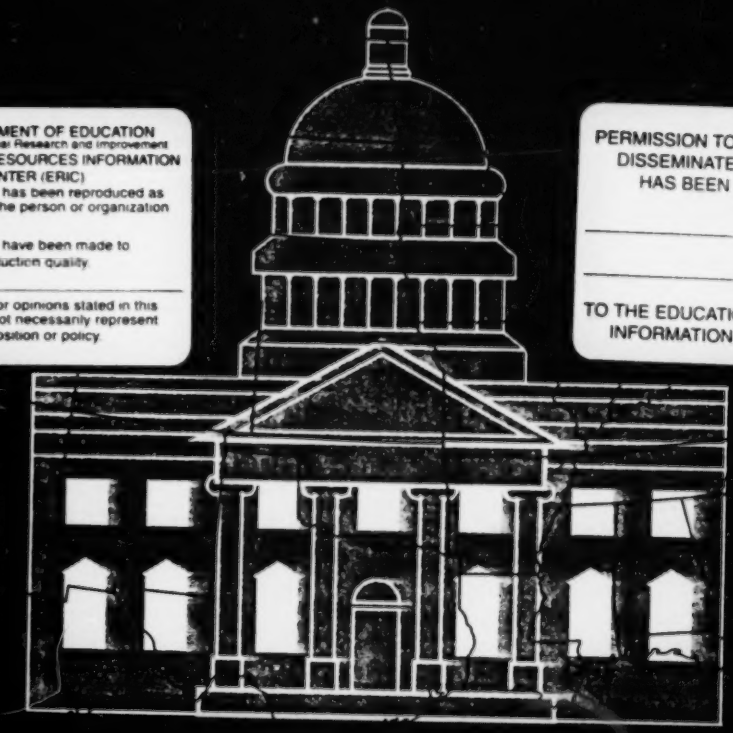
State Responses to Serious and Violent Juvenile Crime



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RESEARCH REPORT

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Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the President and Congress through the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, Public Law 93–415, as amended. Located within the Office of Justice Programs of the U.S. Department of Justice, OJJDP's goal is to provide national leadership in addressing the issues of juvenile delinquency and improving juvenile justice.

OJJDP sponsors a broad array of research, program, and training initiatives to improve the juvenile justice system as a whole, as well as to benefit individual youth-serving agencies. These initiatives are carried out by seven components within OJJDP, described below.

Research and Program Development Division develops knowledge on national trends in juvenile delinquency; supports a program for data collection and information sharing that incorporates elements of statistical and systems development; identifies how delinquency develops and the best methods for its prevention, intervention, and treatment; and analyzes practices and trends in the juvenile justice system.

Training and Technical Assistance Division provides juvenile justice training and technical assistance to Federal, State, and local governments; law enforcement, judiciary, and corrections personnel; and private agencies, educational institutions, and community organizations.

Special Emphasis Division provides discretionary funds to public and private agencies, organizations, and individuals to replicate tested approaches to delinquency prevention, treatment, and control in such pertinent areas as chronic juvenile offenders, community-based sanctions, and the disproportionate representation of minorities in the juvenile justice system.

State Relations and Assistance Division supports collaborative efforts by States to carry out the mandates of the JJDP Act by providing formula grant funds to States; furnishing technical assistance to States, local governments, and private agencies; and monitoring State compliance with the JJDP Act.

Information Dissemination Unit informs individuals and organizations of OJJDP initiatives; disseminates information on juvenile justice, delinquency prevention, and missing children; and coordinates program planning efforts within OJJDP. The unit's activities include publishing research and statistical reports, bulletins, and other documents, as well as overseeing the operations of the Juvenile Justice Clearinghouse.

Concentration of Federal Efforts Program promotes interagency cooperation and coordination among Federal agencies with responsibilities in the area of juvenile justice. The program primarily carries out this responsibility through the Coordinating Council on Juvenile Justice and Delinquency Prevention, an independent body within the executive branch that was established by Congress through the JJDP Act.

Missing and Exploited Children's Program seeks to promote effective policies and procedures for addressing the problem of missing and exploited children. Established by the Missing Children's Assistance Act of 1984, the program provides funds for a variety of activities to support and coordinate a network of resources such as the National Center for Missing and Exploited Children; training and technical assistance to a network of 47 State clearinghouses, nonprofit organizations, law enforcement personnel, and attorneys; and research and demonstration programs.

The mission of OJJDP is to provide national leadership, coordination, and resources to prevent juvenile victimization and respond appropriately to juvenile delinquency. This is accomplished through developing and implementing prevention programs and a juvenile justice system that protects the public safety, holds juvenile offenders accountable, and provides treatment and rehabilitative services based on the needs of each individual juvenile.

State Responses to Serious and Violent Juvenile Crime

Research Report

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Foreword

Prompted by public concern over the increased incidence of violent juvenile crime, State legislators across the Nation have responded with new and far-reaching proposals to alter the authority and practice of the juvenile and criminal justice systems. The magnitude of change is unprecedented in two decades, leading to a system of justice for juvenile offenders that appears quite different from the system of a few years ago. In striving for change, lawmakers and policymakers have developed quite diverse approaches to the problem but have, for the most part, concentrated on efforts that ease and promote more widespread use of adult criminal justice sanctions for a subset of juvenile offenders thought to have exceeded routine juvenile justice intervention.

State Responses to Serious and Violent Juvenile Crime is the first comprehensive analysis of the breadth and depth of this change. In reviewing State legislation and practice, the National Center for Juvenile Justice has both summarized the diversity of change and examined the common themes that are emerging across States. This document groups its findings into five important areas: jurisdictional authority, sentencing, correctional programming, information sharing, and victim involvement.

The Office of Juvenile Justice and Delinquency Prevention initiated the production of this report not only to help in the understanding of this new wave of reform, but also to serve as a guide to those who will subsequently propose new legislation and policy. The underlying message of the document is that States are well along in developing innovative approaches to the vexing problem of juvenile violence while still maintaining, for the majority of juvenile law violators, a system of juvenile justice that preserves the hopeful aspects of a system premised on the malleability of youth.

State Responses to Serious and Violent Juvenile Crime is one publication in a series of actions that the Office uses to provide real, pragmatic guidance to the field in its quest to devise effective solutions to serious juvenile crime. It is the hope of the Office that this particular publication will be used by lawmakers and policymakers to continue to ensure the safety of the community and to promote healthy, law-abiding behavior by our Nation's young people.

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Executive Summary

Nearly every State has taken legislative or executive action in response to escalating juvenile arrests for violent crime and public perceptions of a violent juvenile crime epidemic. These actions have significantly altered the legal response to violent or other serious juvenile crime in this country. In many States, change has occurred in each legislative session since 1992, with more rapid and sweeping change occurring in 1995 and still more expected in 1996. This level of activity has occurred only three other times in our Nation's history: at the outset of the juvenile court movement at the turn of the century; following the U.S. Supreme Court's Gault decision in 1967; and with the enactment of the Juvenile Justice and Delinquency Prevention Act in 1974.

This report documents the sea of change sweeping across the Nation in the handling of serious and violent juvenile offenders. All legislation enacted in 1992–1995 that targeted violent or other serious crime by juveniles was analyzed to determine common themes and trends. Telephone surveys of juvenile justice practitioners in every State provided anecdotal information about substantive and procedural changes that have occurred as a result of the new laws. The report presents a compilation of these changes, an analysis of the direction of those changes and, where appropriate, a historical perspective highlighting instances where what is considered a recent change has, in fact, been around for some time in other States. Implications for policy and practice are offered as considerations for lawmakers and policymakers.

Five common themes emerged from the legislative analysis. Figure 1 identifies these themes as well as the general trend or direction of the changes adopted by States to respond to escalating serious crime by juveniles. The report is organized around each one of these themes.

Figure 1

Themes and Trends in New Laws Targeting Violent or Other Serious Crime by Juveniles

Themes	Trends
Jurisdictional authority	More serious and violent juvenile offenders are being removed from the juvenile justice system in favor of criminal court prosecution.
Judicial disposition/sentencing authority	More State legislatures are experimenting with new disposition/sentencing options.
Correctional programming	Correctional administrators are under pressure to develop programs as a result of new transfer and sentencing laws.
Confidentiality of juvenile court records and proceedings	Traditional confidentiality provisions are being revised in favor of more open proceedings and records.
Victims of juvenile crime	Victims of juvenile crime are being included as "active participants" in the juvenile justice process.

These trends represent both a reaction to the increasingly serious nature of juvenile crime and a fundamental shift in juvenile justice philosophy. Traditional notions of individualized dispositions based on the best interests of the juvenile are being diminished by interests in punishing criminal behavior. Inherent in many of the changes is the belief that serious and violent juvenile offenders must be held more accountable for their actions. Accountability is, in many instances, defined as punishment or a period of incarceration with less attention paid to the activities to be accomplished during that incarceration. Toward that end, dispositions are to be offense based rather than offender based, with the goal of punishment as opposed to rehabilitation.

The trend toward redefining the purpose of the juvenile justice system represents a fundamental philosophical departure, particularly in the handling of serious and violent juvenile offenders. This change in philosophy has resulted in dramatic shifts in the areas of jurisdiction, sentencing, correctional programming, confidentiality, and victims of crime.

Chapter 1 is the introduction to this report. Highlights of each successive chapter/theme follow.

Chapter 2: Jurisdictional Authority

This theme refers to the potential for prosecuting a juvenile in criminal court and includes the mechanisms of judicial waiver, prosecutorial direct file, and statutory exclusion. Each mechanism establishes who has the authority to decide whether the juvenile court or the criminal court will have jurisdiction over an alleged juvenile offender's case. Historically, the offender's age and current offense have been the criteria State legislatures established for determining eligibility for criminal prosecution.

The net result of the new laws has been to increase the potential for criminal justice prosecution and decrease the population eligible for juvenile court intervention. All States allow juveniles to be tried as adults in criminal court under certain circumstances. Since 1992, all but 10 States adopted or modified laws making it easier to prosecute juveniles in criminal court. Legislatures added significantly to the list of offenses now considered serious and/or lowered the age for which certain juveniles could be tried in criminal court. Some States require that juveniles with a particular offense history (a variation on the "three strikes" theme) be prosecuted in criminal court as well.

Legislatures have also increasingly enacted other provisions related to jurisdictional decisions, for example, "reverse waiver," "presumptive waiver," and "once waived/always waived."

Most of the changes in jurisdictional laws—and the change affecting the most juveniles—expand statutory exclusion provisions that automatically eliminate certain categories of juveniles from the juvenile court's original jurisdiction. Since 1992, 24 States added crimes to the list of excluded offenses, and 6 States lowered the age limit on some or all excluded offenses. In all, 36 States and the District of Columbia exclude certain categories of juveniles from juvenile court jurisdiction.

Implementation issues with respect to jurisdictional authority statutes include the following:

- **Increased demands on court and prosecutor resources.** Criminal prosecutions require more prosecutor resources; "three strikes" statutes mean fewer pleas and more jury trials.
- **Longer pretrial stays.** The increase in the number of transferred juveniles, the potential for appeals, and normal criminal justice processing delays mean that more juveniles are being detained for longer periods of time in juvenile detention facilities or adult jails.
- **Overcrowding and programming problems.** Juvenile detention facilities are not programmed for lengthy pretrial stays or while awaiting placement; jails do not provide educational or other services typically available in detention facilities.
- **Lack of guidelines or reporting requirements for prosecutors.** Unlike statewide reporting requirements for courts, there are no such requirements for prosecutorial decisions, nor are there guidelines for making decisions.
- **Procedural issues related to habitual offender statutes.** New "three strikes and you're an adult" statutes are in vogue; however, juveniles may have been denied some protections that are accorded to adult defendants in criminal court such as the right to counsel.

Chapter 3: Judicial Disposition/Sentencing Authority

This theme refers to the disposition or sentencing options available to judges for a juvenile adjudicated or convicted of a serious or violent offense. New laws have had a dramatic impact on sentencing practices, including (1) the imposition of mandatory minimum sentences; (2) the extension of juvenile court jurisdiction beyond the age of majority; and (3) the imposition of "blended sentences" that mix both juvenile and adult sanctions.

Since 1992, legislatures in 13 States and the District of Columbia have added or modified statutes that provide for a mandatory minimum period of incarceration for juveniles convicted of certain violent or other serious crimes.

Extended jurisdiction statutes allow the juvenile court judge to commit a juvenile to a State juvenile institution beyond the age of a juvenile court's jurisdiction, typically age 18. New laws have extended the court's continuing jurisdiction to age 21, or to age 25 in a few States.

"Blended sentencing" refers to the imposition of juvenile and/or adult correctional sanctions. Five basic models of blended sentencing have emerged in recent legislation (see figure 6). Each of the models applies to a subset of alleged juvenile offenders specified by statute, usually defined by age and a serious or violent offense. In three of the models, the juvenile court retains responsibility for adjudicating the case. In the remaining two models, the criminal court has jurisdiction for trying the case. The models also represent the imposition of either "exclusive" sanctioning (either juvenile or adult sanctions), "inclusive" sanctioning (both juvenile and adult sanctions), or "contiguous" sanctioning (first juvenile, then adult sanctions). By the end of the 1995 legislative session, 16 States had enacted some form of blended sentencing statute.

Blended sentencing models in which the juvenile court retains jurisdiction mandate either real consequences or strong incentives to encourage juveniles to access the opportunities available to them in the juvenile justice framework.

Implementation issues with respect to judicial disposition and sentencing include the following:

- **Rights of juveniles.** Because many of the new sentencing options put juveniles at risk of adult sentences, rights of counsel and jury trial are critical.
- **System ambivalence.** Blended sentencing options demonstrate ambivalence and a lack of resolve about what to do with serious and violent juvenile offenders on two fronts: transferring juveniles for whom the juvenile justice system is inadequate, and/or bolstering the resolves and the resources of the juvenile justice system to adequately address the needs of these very difficult offenders.
- **System confusion.** Blended sentencing options create confusion among system actors: When is a juvenile a juvenile, and when is he considered an adult? This is an especially critical issue during processing and subsequent placement.

Chapter 4: Correctional Programming for Juveniles Who Commit Violent or Other Serious Offenses

This theme refers to the range of correctional programs available for juveniles convicted of violent or other serious crimes in either juvenile or criminal courts. Dramatic shifts have occurred in correctional programming due to an increased emphasis on protecting the public and holding offenders accountable for their actions. As a result, adult correctional systems are increasingly challenged to develop programming for younger and more vulnerable inmates. Juvenile correctional systems are increasingly being burdened with older, more violent juveniles.

Inquiries into correctional options for serious and violent juvenile offenders revealed a wide range of correction system responses, including:

- **Straight adult incarceration.** Juveniles sentenced and incarcerated as adults with little differentiation in programming.
- **Graduated incarceration.** Juveniles sentenced as adults but incarcerated in juvenile correctional facilities until they reach a certain age at which they may be transferred to adult facilities for the remainder of their sentence.
- **Segregated incarceration.** Juveniles sentenced as adults but housed in separate facilities for younger adult offenders, occasionally with specialized programming.
- **Youthful offenders.** Designating certain juveniles as "youthful offenders" with or without special programming or legal protections.
- **Back to basics.** Enhanced juvenile corrections systems with a wide range of sanctions to hold juveniles accountable and to protect the public.

Implementation issues with respect to correctional programming include the following:

- **Turf issues.** Some critics contend that had the juvenile justice system received the resources necessary to improve that system, they could have done as good a job or a better job, and at less cost.
- **Funding/capacity issues.** Few States have a good plan for paying for changes, nor do they have a mechanism for implementing them.

- **Programming issues.** Adult corrections departments are being asked to develop programs for a population they neither want nor have the expertise to address. Reform overlooks community corrections as a legitimate sanction for some serious and violent juvenile offenders.

Chapter 5: Confidentiality of Juvenile Court Records and Proceedings

This theme refers to how the juvenile justice system treats information about juveniles charged with or adjudicated for a violent or serious offense. Even though confidentiality issues have existed for decades, there has always been a presumption that juveniles needed to be protected from the full disclosure of their youthful indiscretions. However, as juvenile crime became more violent, community protection and the public's right to know have begun to displace confidentiality as a bedrock principle. Moreover, the need to share information across service delivery systems that see the same subset of juveniles is a concern.

Significant legislative activity has occurred with respect to the disclosure, use, and destruction of juvenile records and the openness of juvenile court proceedings. These trends represent a definitive shift in the use and management of information, with notable impact on juvenile justice processing.

Since 1992, States have increasingly called for a presumption of open proceedings and the release of juvenile offenders' names, particularly if the offense was a serious or violent one.

Many States now open juvenile court records to school officials or require that schools be notified when a juvenile is taken into custody for a crime of violence or when a deadly weapon is used. Some States have lowered the age for which juvenile court records may be made publicly available.

Aside from disclosing or sharing information across systems for the purpose of better coordinating services, legislatures have made provision in three other areas of juvenile records use: (1) centralized repositories, usually based on fingerprinting or photographing; (2) the criminal court's use of a defendant's juvenile record; and (3) sex offender registration laws.

Historically, most legislatures have made specific provision for sealing or expunging juvenile court records. Since 1992, States have increased the number of years that must pass before sealing is allowed. In other States, if a juvenile has committed a violent or other serious felony, his juvenile record cannot be sealed or expunged.

Implementation issues with respect to confidentiality provisions include the following:

- **Quality of records.** The quality and completeness of juvenile arrest and court records must be addressed, particularly when juvenile records are required to be a part of a central repository.
- **Disclosure.** Reporting arrest information without a subsequent requirement to report adjudication outcomes may lead to unfair assumptions about a juvenile's behavior.
- **Open proceedings.** Courtroom security and judicial authority to close proceedings to protect either the victim or the offender are concerns.

Chapter 6: Victims of Juvenile Crime

This theme refers to the victim's role in the juvenile justice system and the system's response to the victim. Since 1992, 22 States have enacted laws that increase the roles or rights of victims of juvenile crime, particularly victims of serious or violent crime by juveniles. The inclusion of victims as active participants in the juvenile justice process represents a reaction to the increasing seriousness of offenses committed by juveniles.

Implementation issues with respect to victims of juvenile crime include the following:

- **Extent of victim's involvement.** Victims should be encouraged but not forced to participate.
- **Reparation and restitution.** New and expanded components of offender accountability can create operational problems and raise fairness issues.

Chapter 7: Selected Case Studies

New laws encompass a wide range of approaches to addressing public fear. The approaches that appear most positive take a long-term view of the problem and go beyond purely retributive measures. Chapter 7 highlights reforms nine States have made that offer either a moderate approach by tackling a piece of the problem or a more comprehensive approach by retooling their juvenile justice system. Arkansas, Connecticut, Florida, Idaho, Minnesota, New Mexico, Pennsylvania, Tennessee, and Texas are highlighted.

Chapter 8: Summary

The composite of change produced by recent legislative and executive actions includes the following:

- **Change is everywhere.** Since 1992, 48 of the 51 State legislatures (including the District of Columbia) have made substantive changes to their laws targeting juveniles who commit violent or serious crimes (see figure 2).
- **Change is consistent.** The nature of justice for a subset of juveniles now involves an increased eligibility for criminal, rather than juvenile, court processing and adult correctional sanctions. The underlying intent of change was to ease and support the State's decision to punish, hold accountable, and incarcerate for longer periods of time those juveniles who had, by instant offense or history, passed a threshold of tolerated "juvenile" criminal behavior.
- **Decisionmaking roles are changing.** Either directly through prosecutorial direct filing or indirectly through the charging process in exclusion cases, the prosecutor has clearly emerged with an expanded role in justice system responses to

Figure 2

Legislatures That Stiffened Laws Targeting Serious and Violent Juvenile Offenders, 1992–1995

Key to Types of Changes in Law or Court Rule
J = Jurisdiction S = Sentencing CP = Correctional Programming
C = Confidentiality V = Victims

Each change indicated enhances the juvenile and/or criminal justice system's response to serious violent crime.

State	Change					State	Change				
Alabama	J				V	Missouri	J	S	CP	C	
Alaska	J			C	V	Montana		S		C	V
Arizona		S		C	V	Nebraska					
Arkansas	J	S	CP	C		Nevada	J			C	
California	J		CP	C	V	New Hampshire	J	S		CV	
Colorado	J	S	CP	C		New Jersey		S		C	
Connecticut	J	S	CP	C	V	New Mexico	J	S	CP		V
Delaware	J	S		C		New York					
District of Columbia	J	S				North Carolina	J		C		
Florida	J	S	CP	C	V	North Dakota	J		CP	C	V
Georgia	J	S	CP	C	V	Ohio	J	S	CP	C	
Hawaii				C		Oklahoma	J			C	
Idaho	J	S	CP	C	V	Oregon	J		CP	C	
Illinois	J	S		C	V	Pennsylvania	J			C	V
Indiana	J	S		C		Rhode Island	J	S			
Iowa	J			C	V	South Carolina	J		CP	C	
Kansas	J		CP	C		South Dakota	J				V
Kentucky	J		CP			Tennessee	J		CP	C	
Louisiana	J	S	CP	C	V	Texas	J	S	CP	C	V
Maine				C		Utah	J			C	V
Maryland	J		CP	C		Vermont					
Massachusetts		S				Virginia	J	S		CV	
Michigan		S		C		Washington	J			C	
Minnesota	J	S		C	V	West Virginia	J				
Mississippi	J		CP	C		Wisconsin	J	S	CP	C	
						Wyoming	J		CP	C	V

Source of data: Szymanski, Linda. *Special Analysis of the Automated Juvenile Law Archive*. National Center for Juvenile Justice, 1996.

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serious and violent juvenile offenders. The juvenile court judge, in 1996, has significantly less authority to make decisions regarding the venue for, or the dispositional outcome of, cases involving violent or other serious crime than he or she did in 1992.

- **Changes will impact minority juveniles.** Because minority juveniles are already overrepresented in the crime categories targeted by new laws (e.g., serious and violent offenses, particularly those involving weapons, and juveniles with more extensive histories), these laws will have a disproportionate impact on minorities.

- **Change involves secure placement.** With few exceptions, changes in sentencing and correctional programming options available to courts have been in the direction of increased incarceration of juveniles convicted of violent or other serious crimes without comparable attention to community corrections, including probation and aftercare.

- **Change precedes capacity.** Legislative prescriptions for enhanced accountability for serious and violent juvenile offenders have, in many cases, anticipated resources and capacity that do not exist.

- **Change is not tested.** In most instances, the reliance on changes that expand existing systems of criminal prosecution and adult corrections for serious and violent juvenile offenders has not been based on evidence that clearly demonstrates the efficacy of the intervention.

The violent criminal behavior of a relatively small proportion of juvenile offenders has created a public perception of rampant violent crime by juveniles and has prompted action by State legislatures and governors to get tough on crime. This report documents the scope of those actions.

While most juvenile justice practitioners concede that some juvenile offenders should be treated as adults by virtue of the nature of their conduct, their prior delinquency, or their lack of amenability to treatment, there is widespread concern in the field over the consequences of treating significant numbers of juvenile offenders as adults.

Clearly, States have shifted the justice system's emphasis to holding juveniles accountable for the seriousness of their offenses. While some States appear to have incorporated that position into a balanced approach that includes protecting the public, restoring the community, and enhancing the offender's ability to function as a law-abiding, contributing member of society, many others have moved to a clear-cut punishment theme. In both instances, States are incarcerating more juvenile offenders for longer periods and redefining more of them as adults. It is not at all clear, however, that punishment is more certain, proportionate, longer, or more effective in the adult system for the entire population of juveniles being transferred. The significant policy issues over what to do about serious and violent juvenile offenders must be debated with the best outcome information available. The impact and consequences of such far-reaching changes in law and practice require that States study their actions.

Chapter 1

Introduction

Extensive media coverage of violent crimes in predominantly urban neighborhoods has fueled perceptions that violence committed by juveniles has reached epidemic proportions and that no community is immune to random violent acts committed by young people—especially those involving a weapon. There is no question that the availability of guns has increased the number of homicides committed by juveniles.

Juvenile arrest rates for violent crime began to increase in the late 1980's. After more than a decade of relative stability, the juvenile violent crime arrest rate soared between 1988 and 1994. If trends continue as they have over the past 10 years, the number of juvenile arrests for violent crime will double by the year 2010 (Snyder, Sickmund, & Poe-Yamagata, 1996).

Although the number of arrests for violent crimes has increased, the data also reveal that juveniles are not responsible for most violent crimes. In 1994 juveniles accounted for just 19 percent of all violent crime arrests. This means that slightly fewer than one-fifth of all persons entering the justice system on a violent crime charge were juveniles. Moreover, fewer than one-half of 1 percent of juveniles in the United States were arrested for a violent offense in 1994. That represents fewer than 1 in 200 juveniles, yet these juveniles are driving national juvenile justice policy concerns. Although violence committed by juveniles is on the increase, adults were responsible for 74 percent of the increase in violent crimes from 1985 to 1994 (Snyder, Sickmund, & Poe-Yamagata, 1996).

Notwithstanding the above consideration, the issue of youth violence has been at or near the top of nearly every State legislature and Governor's agenda for the past several years (see Lyons, 1995; and Romero & Brown, 1995). Some States have even convened special legislative sessions in response to the perceived "epidemic" of violence by this Nation's young people. In addition to new laws, executive reforms have fostered substantive and procedural changes in the handling of serious and violent juvenile offenders.

There is a great need for "a rational and measured approach" to the increasing problem of violent juvenile crime (Coalition for Juvenile Justice, 1994). Although the issue has been much debated, there has not been a systematic attempt to document recent changes and the impact of those changes on the justice system.

The Office of Juvenile Justice and Delinquency Prevention asked the National Center for Juvenile Justice (NCJJ) to compile a resource document that highlights recent changes targeting serious and violent juvenile offenders. Practitioners, governors, attorneys general, State and local politicians, and policymakers could use the document to make informed decisions about this special population.

The Research

NCJJ used a three-pronged strategy for identifying recent State activities that target violent crime by juveniles:

- An analysis of legislation passed from 1992 through 1995 that addressed serious and violent juvenile offenders.
- A telephone survey to identify substantive and procedural changes and the impact of those changes.
- A review of existing data and research that describes recent changes or the impact of those changes.

Legislative changes were identified by searching the current and historical LEGIS databases on Westlaw for the years 1992 up to and including 1995. These databases contain legislation passed by the legislative bodies of the States; in the majority of cases, the governor signs them into law. As a doublecheck, this material was supplemented by telephone survey information and summaries of legislation obtained from individual States.

The telephone survey provided anecdotal information about substantive and procedural changes targeting serious and violent juvenile offenders that have occurred as a result of new laws or executive branch reforms. In nearly every State, the juvenile justice specialist, a juvenile prosecutor, and a State-level juvenile corrections official responded to the survey. These contacts frequently led to the identification of others in the State who could discuss the history of specific legislative or executive reform efforts or who administered particular programs. Most States had more than five respondents.

The review of existing data and research yielded a number of larger studies on particular topics of interest to this work. In addition, numerous reports produced by State-level task forces or commissions tackling juvenile justice reform supplemented the telephone survey information. References to these works are made throughout the document.

This report offers a fairly exhaustive account of the changes in law and practice States have made since 1992; however, it does not represent the universe of change. We have updated two statutory analyses previously conducted by NCJJ across all States to present the current state of the law through the 1995 legislative sessions; that information is presented in Chapters 2 and 5.

References

Coalition for Juvenile Justice. *No Easy Answers: Juvenile Justice in a Climate of Fear.* Washington, DC: Coalition for Juvenile Justice, 1995.

Lyons, D. "Juvenile Crime and Justice State Enactments 1995." *State Legislative Report,* 20(17), November 1995.

Romero, G. and D. Brown. *State Progress in Addressing Youth Violence.* Washington, DC: National Governors Association, 1995.

Snyder, H., M. Sickmund and E. Poe-Yamagata. *Juvenile Offenders and Victims: 1996 Update on Violence.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1996.

Chapter 2

Jurisdictional Authority

Trend: More serious and violent juvenile offenders are being removed from the juvenile justice system in favor of criminal court prosecution.

All States allow juveniles under certain circumstances to be tried as adults in criminal court by way of judicial waiver, direct filing, or statutory exclusion (Snyder and Sickmund, 1995). Furthermore, in any given State, one, two, or all three transfer mechanisms may be in place. Since 1992, all but 10 States adopted or modified laws making it easier to prosecute juveniles in criminal courts. Proponents of such changes argue that rehabilitation is ineffective, particularly for serious and violent juvenile offenders, and that the juvenile justice system has not been, and cannot be, punitive enough to protect society or hold juveniles accountable. To achieve these objectives, legislatures have merely modified the criteria used in deciding which cases to send to criminal court without creating any new transfer[1] mechanisms. The net result, however, has been to increase the potential for criminal justice prosecution and decrease the population eligible for juvenile court intervention.

This chapter summarizes legislation enacted from 1992 through 1995 pursuant to transferring juveniles from juvenile to criminal court. It also addresses some critical concerns for lawmakers and policymakers.

Legal Mechanisms Have Remained Constant

State legislatures traditionally have provided three basic mechanisms that place alleged juvenile offenders into the criminal justice system: (1) judicial waiver, (2) prosecutorial discretion (also termed "direct file" or "concurrent jurisdiction"), and (3) statutory exclusion (also termed "automatic waiver" or "mandatory transfer"). Each of these mechanisms establishes jurisdiction over an alleged juvenile offender's case—in other words, who has the authority to decide whether the case will be heard in juvenile court or in criminal court. The statutory provisions relating to disposition or sentencing options of serious and violent juveniles are discussed in the next chapter.

[1] For the purpose of this discussion, "transfer" refers to the various terms used to designate the mechanism(s) available in any State for criminal justice prosecution of alleged juvenile offenders.

Judicial waiver provisions give the juvenile court judge the authority to decide whether to waive jurisdiction and transfer the case to criminal court. Judicial waiver occurs after consideration of certain criteria, usually the juvenile's age, current offense, criminal history, and amenability to rehabilitation. This transfer mechanism is invoked after a motion made by a prosecutor.

Presumptive waiver, a related provision, shifts the burden of proof supporting a transfer decision from the State to the juvenile. Such provisions require that certain juveniles be waived to criminal court unless they can prove they are suited to juvenile rehabilitation.

Prosecutorial discretion provisions give the prosecutor the authority to decide which court will have jurisdiction over a case when both the juvenile and criminal courts have concurrent jurisdiction. This mechanism is typically limited to certain cases based on the juvenile's age and offense, and sometimes on their criminal history.

Statutory exclusion generally refers to provisions that automatically exclude certain juvenile offenders from the juvenile court's original jurisdiction. Legislatures typically limit exclusions by specifying age and/or offense criteria. One application of this mechanism—lowering the upper age of original juvenile court jurisdiction—excludes the largest number of juveniles from juvenile jurisdiction. Some State legislatures have excluded all 17-year-olds or all 16- and 17-year-olds from juvenile court jurisdiction, making them adults for purposes of criminal prosecution. In 1995, two States (New Hampshire and Wisconsin) lowered their upper age to 16, thereby excluding all 17-year-olds from juvenile court jurisdiction. (In 1993, Wyoming changed its upper age from 18 to 17, thereby conforming to the majority of States.)

Two other types of provisions relate to transfer decisions. Reverse waiver provisions allow the criminal court judge to transfer "excluded" or "direct filed" cases from criminal court to juvenile court under certain circumstances. "Once waived/always waived" provisions stipulate that once juvenile court jurisdiction is waived, all subsequent cases involving that juvenile will be under criminal court jurisdiction.

Potential Population of Eligible Juveniles Has Increased

Historically, the age of the offender and the current offense have been the criteria State legislatures established for determining eligibility for criminal prosecution. In the past 20 years, State legislatures have increased the population of juveniles eligible for criminal prosecution by expanding these criteria across each of the three mechanisms described in the previous section. In response to the perceived increase

of violent juvenile crime, legislatures have, since 1992, added significantly to the list of offenses now considered serious and/or lowered the age for which certain juveniles could be tried in criminal court.

Judicial Waiver. Judicial waiver decisions typically involve the consideration of factors in addition to age and offense. In fact, the U.S. Supreme Court, in *Kent v. United States,* (383 U.S. 541 (1966): 566–67), in finding that the local statute did not set forth specific standards "for the exercise of this important discretionary act," outlined eight factors that should be considered by the judge in deciding whether the juvenile court's jurisdiction should be waived:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.

2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.

3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.

4. The prosecutive merit of the complaint, that is, whether there is evidence upon which a Grand Jury may be expected to return an indictment.

5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the criminal court.

6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

7. The record and previous history of the juvenile, including previous contacts with law enforcement, the court, prior periods of probation or commitments to juvenile institutions, among others.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the juvenile court.

From 1992 to 1995, several States modified their statutes to loosen requirements to waive alleged juvenile offenders to criminal court as follows: 11 States lowered the age limit for 1 or more offenses, 10 States added crimes, and 2 States added prior record provisions (see figure 4). In 1995, Connecticut removed its waiver provision. As of December 1995, all but four States (Connecticut, Nebraska, New Mexico, and New York) provide for judicial waiver of certain juveniles to criminal court (see figure 3).

In addition, State legislatures have increasingly enacted presumptive waiver provisions, which require that certain offenders be waived unless they can prove they are suited to juvenile rehabilitation. Such provisions shift the burden of proof from the State to the juvenile in cases involving certain serious or violent offenses or if the juvenile is a repeat offender. Since 1992, 9 States enacted presumptive waiver statutes, increasing the number of States with such provisions to 13, including the District of Columbia.

Prosecutorial Discretion. A second transfer mechanism is the concurrent jurisdiction provision that gives the prosecutor the discretion to select either juvenile or criminal court jurisdiction. While judicial waiver provisions have been a part of State laws for decades, as of 1982, only eight States provide for concurrent jurisdiction over serious juvenile offenders (Hutzler, 1982). In 1995, 10 States and the District of Columbia provided for prosecutorial discretion (see figure 3). Legislatures in five of these States either enacted or expanded the range of their concurrent jurisdiction statutes since 1992 (see figure 4 for changes).

Statutory Exclusion. Thirty-six States and the District of Columbia exclude certain categories of juveniles from juvenile court jurisdiction (see figure 3). Since 1992, legislatures modified their exclusion statutes to increase the range of juveniles to be excluded from juvenile jurisdiction as follows: 24 States added crimes; 6 States lowered the age limit on some or all excluded offenses; 1 State added lesser included offenses, allowing criminal court jurisdiction to continue with a finding of guilt on an offense other than the original excluding offense; and 1 State added habitual juvenile offender procedures. Two States changed their language from "may" to "shall" transfer (see figure 4).

Other Provisions. Twenty-two States have reverse waiver provisions, which allow the criminal court, usually on a motion from the prosecutor, to transfer excluded or direct-filed cases to the juvenile court. In other words, the criminal court judge decides whether a juvenile case that began in criminal court by virtue of the offender's age or offense can be transferred to juvenile court for adjudication and/or disposition. Reverse waiver statutes can mitigate sweeping exclusion or direct-file provisions. Slightly more than 40% of the States that exclude or direct-file certain juveniles to criminal court provide for their reverse waiver.

Eighteen States have "once waived/always waived" exclusion provisions. Such provisions require that once juvenile court jurisdiction is waived or the juvenile is sentenced in criminal court as a result of direct filing or exclusion, all subsequent cases involving that juvenile will be under criminal court jurisdiction.

Figure 3

Summary of Current Juvenile Transfer Provisions, 1995

State	Judicial waiver	Prosecutor direct filing	Statutory exclusion	Presumptive waiver	Reverse waiver	Once waived/ always waived
Alabama	x		x			x
Alaska	x		x	x		
Arizona	x			x		
Arkansas	x	x			x	
California	x			x		
Colorado	x	x		x	x	
Connecticut	1		x		x	
Delaware	x		x		x	
District of Columbia	x	x	x	x		x
Florida	x	x	x			x
Georgia	x	x	x		x	
Hawaii	x		x			x
Idaho	x		x			x
Illinois	x		x	x		
Indiana	x		x			
Iowa	x		x			
Kansas	x		x			x
Kentucky	x		x		x	
Louisiana	x	x	x			
Maine	x					x
Maryland	x		x		x	
Massachusetts	x			x		
Michigan	x	x				
Minnesota	x		x	x		
Mississippi	x		x		x	x
Missouri	x					x
Montana	x		x			
Nebraska		x			x	
Nevada	x		x		x	x
New Hampshire	x	x		x	x	x
New Jersey	x					
New Mexico			x			
New York			x		x	
North Carolina	x		x			
North Dakota	x		x	x		
Ohio	x		x			x
Oklahoma	x		x		x	
Oregon	x		x			x
Pennsylvania	x		x		x	x
Rhode Island	x		x	x		
South Carolina	x		x		x	x
South Dakota	x			x		
Tennessee	x		x		x	
Texas	x		x		x	x
Utah	x	2	x		x	
Vermont	x	x	x		x	x
Virginia	x				x	x
Washington	x		x			
West Virginia	x		x		x	
Wisconsin	x		x	x		
Wyoming	x	x			x	

Legend: X indicates the provision(s) allowed by each State as of the end of the 1995 legislative session.

Table notes:
1. Connecticut removed its judicial waiver provision in 1995.
2. Utah's direct-file statute was repealed in 1995.

Source: Szymanski, Linda. *Special Analysis of the Automated Juvenile Law Archive.* National Center for Juvenile Justice, 1996.

Figure 4

States Modifying or Enacting Transfer Provisions, 1992–1995

Type of Statute (period of change)	Action Taken (# of States)	States Making Change(s)	Example(s)
Judicial waiver (modifications, 1992–1995)	Added crimes (10)	AK, AR, CA, MO, NC, OH, OR, SC, TN, UT	*North Carolina* added Class A felonies to criteria.
	Lowered age limit (11)	ID, MO, NV, NC, OH, OR, TN, TX, VA, WV, WI	*Missouri* lowered age for certification of juvenile offenders from 14 to 12 for any felony.
	Added prior record provisions (2)	AK, CO	*Colorado* law allows consideration of two or more probation revocations based on acts that would be felonies.
Presumptive waiver (enactments since 1992)	Enacted provisions (9)	AK, CA, CO, DC, IL, MN, ND, SD, WI	In *Illinois*, under certain conditions and for certain serious violent crimes, there is rebuttable presumption that minor is not fit and proper to be dealt with by juvenile court.
Concurrent jurisdiction (modifications or enhancements, 1992–1995)	Enacted or modified (6)	AR, CO, FL, LA, UT[1], WY	In *Wyoming*, cases of children 14 or older charged with violent felonies can be commenced in juvenile or criminal court.
Statutory exclusion (modifications, 1992–1995)	Added crimes (24)	AL, CT, DE, GA, ID, IA, IL, IN, KS, KY, MD, MN, MS, NV, NH, NM, ND, OR, PA, RI, SC, UT, WA, WV	In *Idaho*, criminal court now has jurisdiction of juveniles accused of carrying concealed weapons on school property.
	Lowered age limit (6)	MS, NV, OK, OR, SC, WI	*Mississippi* lowered age of criminal accountability to 17 for felony offenses.
	Added lesser included offense (1)	ID	*Idaho* provides for continuation of criminal court jurisdiction with finding of guilt on offense other than original "excluding" offense.
	Changed language from "may" to "shall" (2)	ND, WV	*North Dakota* provides for mandatory transfer of juveniles to criminal court if: 14 or older; probable cause exists; and offense was murder, gross sexual imposition, or kidnapping.

Table note: 1. Utah's concurrent jurisdiction statute was repealed in 1995.

Considerations With Respect to Jurisdictional Authority

There is no disputing the impact of a violent criminal act on the victim, on the victim's family, or on the community. The violent criminal behavior of a relatively small proportion of juvenile offenders has created a public perception of rampant violent crime by juveniles and prompted action by State legislatures and Governors to get tough on crime. The ramifications of legislatively mandated provisions to criminally prosecute certain juvenile offenders have had a major impact at the local level. More juveniles are being charged and tried in criminal court, detained longer, and incarcerated more frequently in the adult correctional system than ever before.

Although most juvenile justice practitioners concede that some juvenile offenders should be treated as adults by virtue of the nature of their conduct, their prior delinquency, or their lack of amenability to treatment, there is widespread concern in the field over the consequences of treating significant numbers of juvenile offenders as adults. The *Juvenile Justice Action Plan* (OJJDP, 1996) calls for caution in this regard when it states that ". . . the Federal Government and the States must be sure that only those youth who truly require this alternative [criminal prosecution] . . . are placed in the criminal justice system." Clearly, one of the most significant policy issues facing the juvenile justice system today is which type of offender should be transferred into the adult system (Fagan, 1995). The following are critical considerations for lawmakers and policymakers.

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Impact of Legislation. In most States, legislative changes with respect to jurisdictional authority were made without a foundation of research to document their impact on the offender or various justice system components. Such action has resulted in a number of unintended or unanticipated consequences on the administration of justice at the local level:

- *Court and Prosecutor Resources:* Criminal prosecutions require more court and prosecutorial resources than do juvenile proceedings. Prosecutors in some States do not have the resources to prosecute additional cases. Habitual offender ("three strikes") statutes prompt increased demands for jury trials because fewer juveniles agree to plea offers.

- *Pretrial Holding Confusion:* New transfer laws have created procedural issues with respect to the pretrial holding decision. In the absence of clear statutory guidance or regulations, confusion exists at the local level regarding the decision on where the juvenile should be held pending a hearing. Because charging decisions are typically not made until sometime after arrest, the question of when a juvenile should be regarded as a juvenile (and held in a juvenile detention facility) and when he should be considered an adult (and held in jail) poses a dilemma for local practitioners. A related concern is that criminal history and other information that must be applied to the criteria for pretrial holding is typically not available at the arrest stage.

- *Length and Circumstance of Pretrial Detentions:* Increased numbers of transferred juveniles, the potential for an appeals process following a transfer decision, and normal criminal justice delays raise concerns with respect to the length and circumstance of pretrial detention of these juveniles. In some jurisdictions, pretrial detention stays exceed 12 months due to delays. Accompanying programmatic and crowding problems have resulted because juvenile detention facilities are not programmed to accommodate lengthy pretrial stays, nor can they address the staffing and program implications of holding juveniles for many months before adjudication or waiting for an appeal. Moreover, juveniles detained in adult jails often do not have access to education or other typical social service programs found in juvenile detention facilities.

- *Outcome of Criminal Prosecutions:* Research on the outcome of criminal court prosecution provides mixed results at best. Whereas some studies have shown increased incarceration of criminally prosecuted juveniles compared with those retained in the juvenile justice system, other studies demonstrated that serious juvenile offenders are often viewed as nonserious adult offenders and that the adult system does not provide more stringent sanctions than does the juvenile justice system (see references for list of studies).

Clearly, more research is needed that examines and differentiates the factors that influence transfer decisions. New transfer laws have prompted increased transfers of not only serious and chronic offenders, but also juveniles close in age to the juvenile court's upper age of jurisdiction, regardless of the offense. The extended age of the juvenile court's jurisdiction also plays a factor in transfer decisions. To date, some research demonstrates that the core group of violent offenders (particularly in murder cases) does in fact get the intended outcome in terms of longer sentences. Research that differentiated waived cases involving chronic juvenile offenders (typically older juveniles charged with burglary or auto theft) from those who were violent juvenile offenders (with or without multiple priors) found that violent juveniles received substantially longer sentences in criminal court than they did in juvenile court (Podkopacz and Feld, 1995 and 1996).

Prosecutorial Discretion Guidelines. There are a number of considerations with respect to prosecutorial discretion statutes. Unlike judicial waiver provisions, which must be in writing and adhere to due process requirements that the decision be justified in accordance with a number of criteria, a prosecutorial decision to try a juvenile in criminal court is neither subject to judicial review nor generally required to be based upon detailed criteria.

For each mechanism (i.e., judicial waiver, prosecutor direct file, or statutory exclusion), the prosecutor plays an important role in determining whether a juvenile will be sent to criminal court by virtue of his or her charging authority (GAO, 1995:5). Additionally, unlike statewide court reporting requirements, there are no such requirements for prosecutors. Systematic reporting would provide the opportunity to document the extent of direct filings and their impact.

It is also essential that prosecutorial discretion statutes provide guidelines or objective criteria for deciding which cases should be transferred to criminal court and which cases should be heard in juvenile court. The transfer alternative should only be considered for those juveniles whose criminal history, failure to respond to treatment, or serious or violent conduct clearly demonstrates that they require criminal justice system sanctions. Juveniles accused of the same offense and falling into the same age range (even co-conspirators) may face radically different consequences without any guidelines for distinguishing between them. Yet the juvenile tried in criminal court will be burdened with a permanent criminal record, can face a potential life sentence or death penalty, and can be housed

Florida Statute Requires Prosecutor Guidelines

Florida statute requires each State attorney to develop written policies and guidelines to govern determinations for filing an information on a juvenile in criminal court. Other than age and offense criteria, the statute itself does not give much direction other than the public interest requires that adult sanctions be considered. Annually, each circuit's State attorney must submit their policies. Examples of the criteria used in two of Florida's circuits (8th and 19th) include the statutory factors of age and offense as well as the following:

- The statutory criteria used in judicial waiver decisions and the nonstatutory factors of victim impact.
- The fact that the juvenile has previously been subject to criminal prosecution or currently has other cases pending in criminal court.
- Relationship, if any, between the offenses and a pattern of gang involvement.
- Use of a firearm, including whether the juvenile was in personal possession.
- The degree of violence or threatened violence involved in the offense as well as the prior record.
- Factors of lesser weight, to include the convenience of a joint prosecution with co-defendants and the subjective desires and opinions of those involved in the case.

Additional considerations include the following:

- The application of the foregoing factors to each case will depend on the facts and circumstances of that case, and on the standards and expectations of the community.
- The prosecutor should give careful attention to the prosecutive merit of the complaint and should review the case to ensure that the quantum of evidence available will not only establish probable cause but also is sufficient to secure conviction against the juvenile in adult court, where a jury will likely be the trier of fact.
- The decision to transfer is not a simple matter of adding factors or performing a mathematical calculation but rather is a balancing of these factors in order to decide which criteria are more relevant to the overall goals of dealing with the juvenile while protecting the public (Florida Juvenile Justice Advisory Board, 1995).

in the State prison. On the other hand, a co-conspirator tried in juvenile court can later have his civil record expunged, can be released from confinement at a maximum age of 21, and can face incarceration in a juvenile facility.

The Utah Supreme Court, in *State v. Mohi* (901 P.2d 991 (Utah, 1995)), ruled that the Utah Juvenile Court Act's direct file provision violated the uniform operation of laws provision of the State constitution because it allowed too much prosecutorial discretion. The Minnesota Court of Appeals, *In the Matter of the Welfare of: L.J.S. and J.T.K.* (539 N.W.2d 408), held that the statutory provision for a prosecutor-designated "extended jurisdiction juvenile" proceeding is not unconstitutionally vague.

Habitual Offender Statutes. In many States, juvenile adjudications can be used in calculating the criminal history score under adult criminal sentencing guidelines. Adult criminal defendants have challenged this use of their juvenile adjudications. They have argued that the fact that there was no right to a jury trial in a juvenile proceeding should preclude the use of a juvenile adjudication in calculating a criminal history score. Recent case law has gone against them in both State and Federal courts, where it has been held that a defendant's due process rights were not violated by using prior, non-jury, juvenile adjudications to enhance criminal history under either State or Federal sentencing guidelines. The courts reasoned that because the juvenile adjudications were not constitutionally infirm, they may be used in calculating the defendant's criminal history score. Dissenting opinions have argued that a prior juvenile adjudication, entered without the constitutional safeguards required for criminal cases, may not be treated as the equivalent of an adult conviction. They think that prior behavior as a juvenile may be used in sentencing, but only as it represents an individual feature of an individual's past, not as if it were a prior criminal conviction.

The right to counsel issue has been used more successfully to challenge the use of juvenile adjudications in adult criminal court. On this issue, courts have held that, at sentencing, the judge must not consider a defendant's juvenile delinquency adjudications obtained without the benefit of counsel or a valid waiver of counsel.

Summary

State legislatures have provided for a variety of ways to prosecute juveniles in criminal court. The statutory exclusion mechanism, by far affecting the most juveniles, excludes entire categories of juveniles from juvenile court jurisdiction. As cited above, even this mechanism requires that the prosecutor decide whether to charge the juvenile with an excluded or waivable offense.

The impact that the use of transfer has upon the courts and the juvenile and adult correctional systems requires that

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States study their practices so that both they and other States considering such changes can make informed decisions. Moreover, the impact of such broad discretionary powers by judges in judicial waiver cases and prosecutors in direct-file and exclusion cases suggests that there be clear standards or guidelines for making such critical jurisdictional decisions. Individualized justice also requires that cases eligible for criminal prosecution be evaluated on a case-by-case basis. Innovation occurs as the result of the application, on a case-by-case basis, of clear standards that assess the merits and ramifications of criminal prosecution.

References

Coordinating Council on Juvenile Justice and Delinquency Prevention. *Combating Violence and Delinquency: The National Juvenile Justice Action Plan.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 1996.

Fagan, J. "Separating the Men from the Boys: The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders." In *A Sourcebook: Serious, Violent, and Chronic Juvenile Offenders.* Edited by James C. Howell, et al. Thousand Oaks: Sage Publications, 1995.

Florida Juvenile Justice Advisory Board. *Juvenile Direct File Guidelines by Circuit.* Tallahassee: Juvenile Justice Advisory Board, December 1995.

General Accounting Office. *Juvenile Justice: Juveniles Processed in Criminal Court and Case Dispositions.* Washington, DC: U.S. General Accounting Office, August 1995.

Hutzler, J. "Canon to the Left, Canon to the Right: Can the Juvenile Court Survive?" *Today's Delinquent,* 1, 1982.

Snyder, H. and M. Sickmund. *Juvenile Offenders and Victims: A National Report.* Washington, DC: U.S. Department of Justice, August 1995.

References/Transfer Studies

Bishop, D. et al. "The Transfer of Juveniles to Criminal Court: Does It Make a Difference?" *Crime & Delinquency,* 42(2)(April 1996), 171–191.

Buggy, J. "The Transfer of Juvenile to Criminal Court, 1991–1993." Memorandum, Philadelphia County Office of the Administrative Judge, Family Court Division, January 3, 1995.

Burgess, C. A. et al. *Research Report 93-02: The Decision to Transfer, 1992 with 1993 Supplement.* Phoenix: Maricopa County Juvenile Court Center, February 1994.

Champion, D. "Teenage Felons and Waiver Hearings: Some Recent Trends, 1980–1988." *Crime & Delinquency,* 35(4)(October 1989), 577–585.

Houghtalin, M. and L. Mays. "Criminal Dispositions of New Mexico Juveniles Transferred to Adult Court." *Crime & Delinquency,* 37(3)(July 1991), 393–407.

Kinder, K. et al. "A Comparison of the Dispositions of Juvenile Offenders Certified as Adults with Juvenile Offenders Not Certified." *Juvenile and Family Court Journal,* 1995, 37–42.

Lemmon, J., H. Sontheimer, and K. Saylor. *A Study of Pennsylvania Juveniles Transferred to Criminal Court in 1986.* Prepared for the Pennsylvania Juvenile Court Judges Commission, April 1991.

Phillips, M. "A Study of Utah Youth Considered for Transfer from Juvenile Court to Adult Court During 1994 and Some Speculation on the Impact of Utah's New Serious Youth Offender Act." Salt Lake City: Administrative Office of the Courts, May 5, 1995 (draft).

Podkopacz, M. R. and B. Feld. "The End of the Line: An Empirical Study of Judicial Waiver." *The Journal of Criminal Law and Criminology,* 86(2)(Winter 1996), 449–492.

Podkopacz, M. R. and B. Feld. "Judicial Waiver Policy and Practice: Persistence, Seriousness and Race." *Law & Inequality: A Journal of Theory and Practice,* XIV(1)(December 1995), 73–178.

Poulos, T. M. and S. Orchowsky. "Serious Juvenile Offenders: Predicting the Probability of Transfer to Criminal Court." *Crime & Delinquency,* 40(1)(January 1994), 3–17.

Rivers, J. and T. Trotti. *South Carolina Delinquent Males: An 11-Year Follow-up into Adult Probation and Prison.* South Carolina Departments of Corrections, Juvenile Justice and Probation, Parole and Pardon, April 1995.

Sanborn, J., Jr. "Certification to Criminal Court: The Important Policy Questions of How, When, and Why?" *Crime & Delinquency,* 40(2)(April 1994), 262–281.

Chapter 3

Judicial Disposition/ Sentencing Authority

Trend: More State legislatures are experimenting with new disposition/sentencing options.

The ability to individualize the judicial response of the system to each offender has been one of the defining characteristics of the juvenile justice system since its inception. Traditionally, after a determination of delinquency, juvenile codes have provided juvenile court judges with an array of disposition options that can be applied to that juvenile based on the judge's discretion regarding what is in the best interest of the juvenile (Minnesota Supreme Court, 1994). The traditional emphasis on individualized or offender-based dispositional outcomes for juvenile offenders assumes that juvenile court dispositions should be based on the needs of the offender, allow for broad judicial discretion, and emphasize the future welfare of the juvenile.

In recent years, however, many States have legislatively redefined the juvenile court's purpose by diminishing the role of rehabilitation and acknowledging the importance of public safety, punishment, and accountability in the juvenile justice system (Feld, 1995). For the most part, this change has occurred because of public safety concerns about a subset of juvenile offenders—those who commit violent offenses. As a result, State legislatures have determined that some dispositions should be offense based as opposed to offender based, with the goal of punishment or incapacitation rather than rehabilitation (see figure 5).

The trend toward redefining the purpose of juvenile courts represents a fundamental philosophical departure in juvenile justice and has resulted in dramatic shifts, particularly with respect to judicial dispositional/sentencing practices, including (1) the imposition of "blended sentences" that mix both adult and juvenile sanctions; (2) the imposition of mandatory minimum sentences for certain types of offenders or offense categories; and (3) the extension of juvenile court jurisdiction for dispositional purposes beyond the age of majority, lengthening the time that a juvenile is held accountable in juvenile court.

Blended Sentencing

Blended sentencing statutes represent a dramatic change in dispositional/sentencing options available to judges. Blended sentencing refers to the imposition of juvenile and/or adult correctional sanctions to cases involving serious and violent juvenile offenders who have been adjudicated in juvenile court or convicted in criminal court. Blended sentencing options are usually based on age or on a combination of age and offense. For the purpose of this report, blended sentencing sanctions dispensed by either juvenile or criminal court judges are distinguished from the programming changes that have occurred within State adult and juvenile correctional systems. Chapter 4 describes the changes that have resulted, in part, from blended sentencing statutes but also from the demands placed on these correctional systems by an escalating number of juveniles convicted of violent or other serious offenses.

Five basic models of blended sentencing have emerged in recent legislation (see figure 6). Each of the models applies to a subset of alleged juvenile offenders specified by State statute, usually defined by age and offense. In three of the models, the juvenile court retains responsibility for adjudicating the case. In the remaining models, the criminal court has jurisdiction for trying the case.

Figure 5

Juvenile Court Sentencing Framework

Traditional	Emerging
Offender Based: Dispositions based on the individual characteristics of the offender and offender's situation.	*Offense Based:* Dispositions based on the offenses committed.
■ Indeterminate	■ Determinate
■ Based on individual needs	■ Proportional to offense (harm)
■ Goal of rehabilitation	■ Goal of retribution or deterrence

Moreover, the models represent "exclusive" sanctioning (either juvenile or adult sanctions), "inclusive" sanctioning (both juvenile and adult sanctions), or "contiguous" sanctioning (first juvenile, then adult sanctions). The five models "blend" sentencing options in the following ways:

- *Juvenile—Exclusive Blend:* The juvenile court imposes a sanction involving either the juvenile correctional system or the adult correctional system.
- *Juvenile—Inclusive Blend:* The juvenile court simultaneously imposes both a juvenile correctional sanction and an adult correctional sanction, which is suspended pending a violation and revocation.
- *Juvenile—Contiguous:* The juvenile court imposes a juvenile correctional sanction that may remain in force beyond the age of its extended jurisdiction, at which point various procedures are invoked to transfer the case to the adult correctional system.
- *Criminal—Exclusive Blend:* The criminal court imposes either a juvenile or adult correctional sanction.
- *Criminal—Inclusive Blend:* The criminal court imposes both a juvenile and an adult correctional sanction and suspends the adult sentence pending a violation or re-offense.

The charts in the addendum to this chapter provide overviews of various State blended sentencing statutes. Examples of each model are described in figure 6.

Juvenile—Exclusive Blend

The New Mexico statute is the singular example of a sentencing option in which the juvenile court can impose a sanction involving either the juvenile or the adult correctional system. The legislature created a "youthful offender" category, including juveniles age 15 charged with first-degree murder; 15- to 17-year-olds charged with a felony in addition to having three prior separate felony adjudications in a 2-year period; and 15- to 17-year-olds charged with a variety of serious offenses. (These offenses are not subject to judicial waiver, and only juveniles ages 16 or 17 and charged with first-degree murder are excluded from juvenile jurisdiction.)

The juvenile court has original jurisdiction over youthful offenders, and the juvenile has the right to jury trials, counsel, open hearings, and bail. If adjudicated, the juvenile judge has discretion to impose either an adult or a juvenile sanction. For an adult sentence, the judge can impose up to the adult mandatory term. The prosecutor must file a motion within 10 days of filing a petition asking the judge to apply adult sanctions. In imposing a juvenile sanction, the judge may sentence the juvenile either to 2 years or until he reaches the age of 18, whichever is longer (unless he is discharged sooner). The Juvenile Parole Board participates in the determination of a juvenile's release date.

Juvenile—Inclusive Blend

Minnesota, Connecticut, and Montana statutes are examples of the sentencing option that allows the juvenile court to impose a sanction involving both juvenile and adult correctional systems. The Minnesota legislature applied that option to a new legal category of juvenile referred to as extended jurisdiction juvenile prosecution (EJJP). A Supreme Court task force recommended the new category be created to provide a viable dispositional option for juvenile court judges facing juveniles who have committed serious or repeat offenses and to give juveniles one last chance at success in the juvenile system, with the threat of adult sanctions as a disincentive (Minnesota Supreme Court, 1994). The criteria for determining whether the proceeding is an EJJP include:

- A juvenile 14 to 17 years old, where a certification hearing was held and the court designated the proceeding an EJJP.
- A juvenile 16 or 17 years old who committed an offense that carries a presumptive prison commitment or who committed any felony involving a firearm, and the prosecutor designated in the petition that the proceeding is an EJJP.
- A juvenile 14 to 17 years old, and the prosecutor requested the proceeding be designated an EJJP, a hearing was held on the issue of designation, and the court designated the proceeding an EJJP.

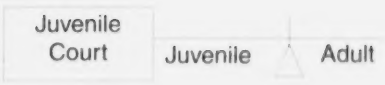
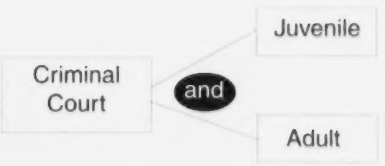
If an EJJP results in a guilty plea or a finding of guilt, the juvenile court shall impose one or more juvenile dispositions and impose a criminal sentence, the execution of which is stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense. The juvenile court retains jurisdiction over extended jurisdiction juveniles to age 21. Juveniles have the right to a jury trial and effective assistance of counsel.

Juvenile—Contiguous

Four States (Colorado, for "aggravated juvenile offenders"; Massachusetts; Rhode Island; and Texas) have recently enacted a sentencing option that allows the juvenile court to impose a sanction that may remain in force beyond the age of its extended jurisdiction, at which point various procedures are invoked to transfer the case to the adult correctional

Figure 6

Models of "Blended Sentencing" Statutes*

Court	Type of Sanction	Description	Examples
		Juvenile—Exclusive Blend: The juvenile court has original jurisdiction and responsibility for adjudication of the case. The juvenile court has the authority to impose a sanction involving either the juvenile or adult correctional systems.	New Mexico
		Juvenile—Inclusive Blend: The juvenile court has original jurisdiction and responsibility for adjudication of the case. The juvenile court has the authority to impose a sanction involving both the juvenile and adult correctional systems. In most instances, the adult sanction is suspended unless there is a violation, at which point it is invoked.	Connecticut Minnesota Montana
		*Juvenile—Contiguous:* The juvenile court has original jurisdiction and responsibility for adjudication of the case. The juvenile court has the authority to impose a sanction that would be in force beyond the age of its extended jurisdiction. At that point, various procedures are invoked to determine if the remainder of that sanction should be imposed in the adult correctional system.	Colorado (1) Massachusetts Rhode Island South Carolina Texas
		Criminal—Exclusive Blend: The criminal court tries the case. The criminal court has the authority to impose a sanction involving either the juvenile or adult correctional systems.	California Colorado (2) Florida Idaho Michigan Virginia
		*Criminal—Inclusive Blend:* The criminal court tries the case. The criminal court has the authority to impose a sanction involving both the juvenile and adult correctional systems. In most instances, the adult sanction is suspended unless there is a violation, at which point it is invoked.	Arkansas Missouri

* Each of the models presented applies to a subset of alleged juvenile offenders specified by State statute. For distinction between Colorado (1) and (2), see Addendum to this chapter.

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system. (South Carolina's statute is longstanding; however, it is not used.) Texas has a determinate sentencing act that, by virtue of the length of the sentence imposed, is an example of a contiguous blended sentencing statute. Since 1987, a juvenile court judge or jury could impose a sentence of any length from 1 to 30 years. From the beginning, the law protected the rights of juveniles in jeopardy of such sentences by requiring (1) a grand jury to consider and approve the petition charging 1 or more of the eligible offenses and (2) a 12-person jury at adjudication and disposition phases of juvenile court proceedings.

Upon sentencing, the juvenile is incarcerated in Texas Youth Commission (TYC) facilities. The original legislation stipulated that the juvenile could be released only after a hearing before the committing juvenile court. If the juvenile is not released by age 17½, the juvenile court must hold a transfer hearing to decide whether to release the juvenile from the TYC on parole or to order him transferred to the Texas Department of Corrections (DOC) to serve the balance of the sentence.

In 1995 the legislature enhanced the law to provide for determinate sentences of up to 40 years, mandatory minimum sentences for certain offenses, and 15 additional offenses for which a determinate sentence could be delivered. They also eliminated the requirement for the transfer hearing and prohibited the court or the TYC from discharging a juvenile before the completion of his sentence. The law is considered by many an effective tool for punishing violent and chronic offenders while giving them a final chance with incentive to access the rehabilitative programs of the juvenile system (Dawson, 1995).

Criminal—Exclusive Blend

The Florida statute is an example of an "exclusive blended sentence" option wherein the criminal court can impose either a juvenile or an adult correctional sanction. California, Colorado (for "youthful offenders"), Idaho, Michigan, and Virginia also enacted such provisions. The Florida legislature expanded their direct-file and exclusion provisions in 1994, thereby providing the mechanism for a wide range of juveniles to be tried in criminal court. As a balance to those measures, the legislature gave the criminal court the latitude to apply either juvenile or adult sanctions to these juveniles. Both the DOC and the Department of Juvenile Justice jointly prepare a report for the sentencing hearing regarding the suitability of the offender for disposition in their respective systems. After consideration of the report and comment by parties to the case, the criminal court judge considers a set of statutorily defined criteria to determine whether to impose youthful offender or juvenile offender sanctions instead of adult sanctions. However, a decision by the court to impose adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or enumerate the statutory criteria as a basis for its decision to impose adult sanctions. If the criminal court decides to impose juvenile sanctions, the juvenile is adjudicated delinquent and committed to the Department of Juvenile Justice. If the criminal court imposes a youthful offender sanction, the juvenile is convicted as an adult and is committed to the youthful offender program within the DOC.

Criminal—Inclusive Blend

Only two States, Arkansas and Missouri, have a sentencing provision that allows the criminal court to impose a sanction involving both the juvenile and adult correctional systems. In 1995 Missouri passed legislation that allows the criminal court to invoke the dual jurisdiction of both the juvenile and criminal codes when a juvenile offender has been transferred to criminal court. Juveniles ages 12 to 17 charged with any felony, or any juvenile charged with one of seven violent offenses or who committed two or more prior unrelated felonies, may be waived to criminal court. If the juvenile is found guilty, the criminal court is authorized to impose a juvenile disposition and a criminal disposition simultaneously. Execution of the criminal sentence is suspended during imposition of the juvenile disposition. The statute contains provisions for revoking the juvenile disposition and invoking the criminal sentence for violations of conditions of the imposed disposition. The Arkansas statute is rarely used.

Mandatory Minimum Commitment Requirements

The inclusion of mandatory minimum commitment requirements in juvenile codes provides another example of shifts in disposition/sentencing practices. Since 1992, 15 States and the District of Columbia[2] have added or modified statutes that provide for a mandatory minimum period of incarceration of juveniles committing certain violent or other serious crimes. In Texas, for example, a juvenile must receive a mandatory minimum sentence of at least 10 years for capital murder, 3 years for first-degree felonies or serious drug felonies, 2 years for second-degree felonies, and 1 year for third-degree felonies. Other examples of mandatory minimum commitment statutes for juveniles convicted of a serious or violent offense include:

- *Georgia:* For designated felonies, the juvenile court must sentence a delinquent to a secure juvenile institution for not less than 1 year and no more than 5 years.

[2] Arizona, Colorado, Connecticut, District of Columbia, Georgia, Idaho, Indiana, Louisiana, Massachusetts, Missouri, New Jersey, Ohio, Oregon, Texas, Virginia, and Wisconsin.

- *Louisiana:* A 1993 statute provides that, for certain serious violent felony-grade delinquent acts, juveniles must be committed to the DOC and placed in a secure facility until age 21 without benefit of parole, probation, modification, or furlough.
- *Massachusetts:* If a juvenile age 14 or older is convicted of murder, the sentence may not be fewer than 15 years for first-degree murder or fewer than 10 years for second-degree murder.
- *Oregon:* S.B. 1, passed in 1995, requires mandatory sentences for 15- to 17-year-olds convicted of certain offenses, as follows:
  - Murder (300 months).
  - First-degree/second-degree manslaughter (120/75 months).
  - First-degree/second-degree assault (90/70 months).
  - First-degree/second-degree kidnapping (90/70 months).
  - First-degree/second-degree rape, sodomy, or unlawful sexual penetration (100/75 months).
  - First-degree sexual abuse (75 months).
  - First-degree/second-degree robbery (90/70 months).
- *Wisconsin:* A 1993 law requires that a presumptive minimum prison sentence be imposed on juveniles who commit battery or assault while placed in a secure juvenile correctional facility.

Extended Jurisdiction

State legislatures have also increased the maximum age of the juvenile court's continuing jurisdiction over juvenile offenders. While every juvenile court code sets an upper age of original juvenile court jurisdiction for dispositional purposes, each also sets an age to which the juvenile court's jurisdiction may be extended. Such provisions allow the juvenile court judge to commit a juvenile to the State juvenile corrections department, typically to age 21; however, in California, Oregon, and Wisconsin, the extended age is 25 years. In Colorado, Connecticut, Hawaii, and New Mexico, the juvenile court's jurisdiction is indefinite, but is typically in effect until all orders have been complied with or the term of commitment has been served. Since 1992, 11 States[1] and the District of Columbia have extended the age for juvenile commitments.

[1] Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Minnesota, Missouri, New Hampshire, New Mexico, and Ohio.

Extending the age of the juvenile court's continuing jurisdiction reflects concerns that placing juveniles in adult correctional facilities is dangerous and ineffective. Proponents argue that the length of treatment, rehabilitation, or incarceration possible in the juvenile system is too short to satisfy the public and rehabilitate the juvenile.

Considerations With Respect to Judicial Disposition/Sentencing Options

There are a number of considerations with respect to the shift toward offense-based sentencing patterns for serious and violent juvenile offenders.

Rights of the Juvenile: Because many of the sentencing options for serious and violent offenders in juvenile court put the juvenile at risk of an adult sentence or allow that such adjudications will be used in future prosecutions, the right to counsel is a critical concern and has been successfully used to challenge the use of juvenile adjudications in criminal court.

System Ambivalence: Blended sentencing options demonstrate the ambivalence of what to do about serious and violent juvenile offenders. The creation of "middle ground" disposition/sentencing and correctional options demonstrates a lack of resolve on two fronts: (1) coming to closure on (i.e., removing) certain juveniles for whom the juvenile justice system is inadequate or (2) bolstering the resolve and resources of the juvenile justice system to adequately address the needs of these very difficult young offenders.

System Confusion: Blended sentencing creates confusing options for all system actors, including offenders, judges, prosecutors, and corrections administrators. Contact with juvenile and criminal justice personnel across the country revealed that confusion exists about these statutes and the rules and regulations governing them, especially with respect to the juvenile's status during case processing and subsequent placement. This has repercussions on the definition of a juvenile with regard to compliance with the Juvenile Justice and Delinquency Prevention Act mandates.

Summary

As juvenile crime has become increasingly more violent, State legislatures have moved away from traditional offender-based disposition and sentencing options toward more offense-based dispositions. This is reflected in changes in dispositions and sentences, including blended sentencing, mandatory sentencing, and extended jurisdiction statutes that are usually specified by the offense alone. There seems to be a strong desire among legislatures in a number of States to maintain serious and violent juvenile offenders within existing delinquency systems, with the option of criminal prosecution when necessary. Blended sentencing models, in which the juvenile court retains jurisdiction, mandate either real consequences or strong incentives to encourage juveniles to access the opportunities available to them in the juvenile justice framework. In several instances, blended sentences are the tools States have developed to encourage juveniles to use juvenile justice resources for competency development while making sure the juvenile is held accountable for his actions.

References

Dawson, R. O. (ed.). *State Bar Section Report on Juvenile Law: Special Legislative Issue*, 9(3), August 1995.

Feld, B. C. "Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform." *Minnesota Law Review*, 79(5), May 1995.

Minnesota Supreme Court. *Advisory Task Force on the Juvenile Justice System: Final Report.* St. Paul, Minnesota: Supreme Court, 1994.

Addendum to Chapter 3: Blended Sentencing Statutes

Arkansas	**California**	**Colorado** (1)
No special designation	No special designation	***Designation*** "Aggravated Juvenile Offender"
Age and Offense 14 or 15, direct file or waiver cases (capital murder; first- and second-degree murder; kidnapping; aggravated robbery; rape; first- and second-degree battery; possession of handgun on school property; aggravated assault; terroristic act; unlawful discharge of a firearm from a vehicle; any felony committed with a firearm; soliciting a minor to join a criminal street gang; criminal use of a prohibited weapon; and felony attempt solicitation or conspiracy to commit capital murder, first- or second-degree murder, kidnapping, aggravated robbery, rape, or first-degree battery). 14, direct-file case, and a felony under Minor in Possession of Handgun charge or charged with a felony with three prior felony adjudications within the last 2 years. 16–17 and a felony.	***Age and Offense*** Any remanded juvenile (i.e., 16, any crime; 14, serious crime). Serious crimes include murder; robbery (with firearm use); rape; sodomy; oral copulation; kidnapping; discharging firearm; manufacturing or selling one-half ounce or more of controlled substance; escape by use of force or violence; torture; aggravated mayhem; assault with firearm; rape, burglary, or kidnapping (with firearm use); and carjacking.	***Age and Offense*** 12 and adjudicated a delinquent for a Class 1 or Class 2 felony or if his probation is revoked for above. 16 and adjudicated a delinquent for felony and is either subsequently adjudicated delinquent for a crime of violence or has probation revoked for above.
Court Criminal court (for certain direct-file and waived cases).	***Court*** Criminal court.	***Court*** Juvenile court.

(Continued)

Addendum to Chapter 3: Blended Sentencing Statutes *(continued)*

Arkansas *(continued)*	**California** *(continued)*	**Colorado** (1) *(continued)*
No special designation	No special designation	***Designation*** "Aggravated Juvenile Offender"
Sentence/Disposition Criminal court may suspend sentence to the DOC if judge determines that a youthful offender would be more amenable to the rehabilitation programs of the juvenile corrections authority. Note: This provision, while longstanding, is rarely exercised.	***Sentence/Disposition*** If juvenile is found unfit for juvenile court and remanded to criminal court, the criminal court judge may (1) commit to the California Youth Authority (if sentence exceeds the juvenile's 25th birthday, judge must commit to the DOC, with housing in the CYA); OR (2) commit to the State prison system (DOC) (except that no juvenile under 16 may be committed to prison).	***Sentence/Disposition*** The petition must allege that juvenile is an aggravated juvenile offender and that increased commitment is authorized; at juvenile's first appearance, court shall advise him of the effect and consequences of the allegation. Court may enter any juvenile sentence, including a commitment to the Department of Human Services (DHS), for a determinate period of 5 years.
		Upon court order, DHS may transfer juvenile to the DOC if juvenile is 18 and DHS has certified that the juvenile is no longer benefiting from its programs. When juvenile is in custody of DHS and reaches age of 20 ½ years, motion filed for court to transfer custody to the DOC, authorize early release, or order that custody remain with DHS until age 21. Petition must be filed for transfer to nonsecure or community setting or for early release from the DOC or DHS.
Rights All rights.	***Rights*** All rights.	***Rights*** Jury trial.

(Continued)

Addendum to Chapter 3: Blended Sentencing Statutes *(continued)*

Colorado (2)	**Connecticut**	**Florida**
Designation "Youthful Offender"	***Designation*** "Serious Juvenile Repeat Offender"	No special designation
Age and Offense I. 14 and class 1 or 2 felony. II. 14 and "crime of violence" felony; certain felony with firearms/weapons offenses; deadly weapon in commission of person felony. III. 16 and adjudicated within 2 previous years for felony, and alleged offense is Class 3 felony. IV. 14 and previously found guilty in district court, and alleged offense is felony. V. 14 and alleged offense is fenony, and juvenile is habitual juvenile offender.	***Age and Offense*** 14–15 and charged with a third felony.	***Age and Offense*** Any juvenile charged with a violation of State law punishable by death or life imprisonment is subject to the jurisdictions of juvenile court unless and until an indictment on the charge is returned by the grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult. Any age, with three separate adjudications that involved residential commitments. 14, direct file for any criminal offense. 14 and charged with a fourth felony offense, and the three previous ones for which they were adjudicated delinquent or had adjudication withheld or were found to have committed three felony offenses, and one of the previous offenses involved the use or possession of a firearm or violence against a person. 14, direct-file or waiver case when there is a previous adjudication for murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault, and is currently charged with a second or subsequent violent crime against a person. 14 or 15, direct file for arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; lewd and lascivious assault or act in the presence of a child; and carrying, displaying, using, threatening, or attempting to use a weapon or firearm during commission of a felony. 16 or 17, direct-file case with previous adjudication for murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault, and is charged with a second or subsequent violent crime against a person. 16 or 17, direct-file case when public interest requires that adult sanctions be considered. However, they may not file if the charge is a misdemeanor, unless the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which involved an offense classified as a felony under State law.
Court Criminal court (direct-filed cases).	***Court*** Juvenile court.	***Court*** Criminal court (direct-filed cases).

(Continued)

Addendum to Chapter 3: Blended Sentencing Statutes *(continued)*

Colorado (2) *(continued)*	**Connecticut** *(continued)*	**Florida** *(continued)*
Designation "Youthful Offender"	***Designation*** "Serious Juvenile Repeat Offender"	No special designation
Sentence/Disposition District judge shall sentence juvenile as follows: (1) As an adult (if guilty of I, III, or IV), (2) To the Youthful Offender system in the DOC if guilty of II or V (with exceptions), OR (3) Juvenile sanction if younger than 16 and guilty of offense other than Class 1 or Class 2 felony or "crime of violence" or is guilty of offense in V. If sentenced as a juvenile, mandatory sentence provisions apply.	***Sentence/Disposition*** The prosecution initiates a "serious juvenile repeat offender" proceeding in juvenile court. If approved, hearing must take place within 30 days, and juvenile must waive right to jury trial. If juvenile found guilty, judge may impose a juvenile and adult sentence, suspending execution of the adult sentence unless there is a violation.	***Sentence/Disposition*** Criminal court judge shall sentence juvenile as follows: (1) To DOC facilities for adults, (2) To DOC/Youthful Offender Program sanctions, OR (3) To Department of Juvenile Justice sanctions. Note: The sentencing judge must consider a set of criteria defined in statute when considering youthful offender or juvenile sanctions in lieu of adult sanctions.
Rights All rights.	***Rights*** Jury trial, counsel, bail.	***Rights*** All rights.

(Continued)

Addendum to Chapter 3: Blended Sentencing Statutes *(continued)*

Idaho	**Massachusetts**	**Michigan**
No special designation	No special designation	***Designation*** "Life Offenses"
Age and Offense 14–17 and murder or attempted murder, robbery, rape, forcible penetration, infamous crimes against nature by force or violence, mayhem, assault or battery with intent to commit any of above; violation of drug laws within 1,000 feet of school or park; first-degree arson or aggravated arson. Any juvenile younger than 14 who has been waived.	***Age and Offense*** 14 to 17, first- and second-degree murder.	***Age and Offense*** 15 and direct-filed for assault with intent to commit murder; armed assault with intent to rob or steal; attempted murder; first- and second-degree murder; first-degree criminal sexual conduct; armed robbery; carjacking; unlawful manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance; unlawful dispensing, prescription, or administration of a controlled substance; possession of a controlled substance.
Court Criminal court (excluded offense or waived cases).	***Court*** Juvenile court.	***Court*** Criminal court (direct-filed cases).
Sentence/Disposition Judge may choose any juvenile sentencing options if finding is made that adult sentencing measures would be inappropriate.	***Sentence/Disposition*** Juvenile adjudicated for first- or second-degree murder can receive "blended" sentence beginning with secure confinement in youth facility with (1) possible administrative transfer to adult corrections at age 18 or (2) mandatory transfer at age 21.	***Sentence/Disposition*** Criminal court judge can impose any criminal sentence or may conduct hearing to determine whether best interests of juvenile and public would be served by placing delinquent on probation and committing juvenile to Department of Social Services.
Rights All rights.	***Rights*** Jury trial, counsel, open hearing, bail.	***Rights*** All rights.

(Continued)

Addendum to Chapter 3: Blended Sentencing Statutes *(continued)*

Minnesota	Missouri	Montana
Designation "Extended Jurisdiction Juvenile Prosecutions"	No special designation	***Designation*** "Extended Jurisdiction Prosecution"
Age and Offense Proceeding involving child alleged to have committed a felony offense is extended jurisdiction juvenile prosecution if: 14–17, certification hearing was held, and court designated proceeding as extended jurisdiction juvenile proceeding. 16 or 17, subject to presumptive certification or committed a felony using a firearm. 14–17, prosecutor requested proceeding to be designated as extended jurisdiction juvenile prosecution, hearing was held, and court designated proceeding as extended jurisdiction juvenile prosecution.	***Age and Offense*** 12–17 and any felony, court may order hearing and transfer case to criminal court. Any juvenile charged with murder (first and second degree), assault (first degree), forcible rape or sodomy, robbery (first degree), distribution of drugs, or committed two or more prior unrelated felonies, court shall order hearing and may transfer case to court of general jurisdiction.	***Age and Offense*** Offense is transferable (e.g., 12 and sexual intercourse without consent, deliberate homicide or mitigated deliberate homicide; 16 and negligent homicide, arson, aggravated or felony assault, aggravated kidnapping, possession of explosives, dangerous drugs (sale, manufacture), or attempts of any of above). 12 and allegedly used a weapon.
Court Juvenile court.	***Court*** Criminal court (waived cases).	***Court*** Juvenile court.
Sentence/Disposition If minor found to be extended jurisdiction juvenile, the juvenile court shall: (1) Impose one or more juvenile dispositions; AND (2) Impose adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense. Juvenile courts will retain jurisdiction over extended jurisdiction juveniles until age 21 (versus 19 for other juveniles).	***Sentence/Disposition*** Criminal court judge may impose juvenile disposition and simultaneously impose adult criminal sentence, to be suspended pending satisfactory completion of the juvenile disposition.	***Sentence/Disposition*** If juvenile found guilty, juvenile court shall: (1) Impose one or more juvenile dispositions; AND (2) Impose adult criminal sentence, the execution of which must be stayed on conditions.
Rights Extended jurisdiction juveniles are accorded right to trial by jury and right to effective assistance of counsel.	***Rights*** All rights.	***Rights*** Counsel, open hearing, bail.

(Continued)

Addendum to Chapter 3: Blended Sentencing Statutes *(continued)*

New Mexico	**Rhode Island**	**South Carolina**
Designation "Youthful Offender"	No special designation	No special designation
Age and Offense 15 and first-degree murder. 15–17 and a felony, plus three prior separate felony adjudications in a 2-year period. 15–17 and second-degree murder, assault with intent to commit felony, kidnapping, aggravated battery, shooting at occupied building, dangerous use of explosives, criminal sexual penetration, robbery, aggravated burglary, aggravated arson.	***Age and Offense*** Under 18, felony.	***Age and Offense*** Any juvenile whose sentence includes commitment to the custody of the Department of Juvenile Justice for crime that, when committed by adult, would carry maximum sentence of 30 years or more.
Court Juvenile court (above offenses not subject to waiver).	***Court*** Juvenile court.	***Court*** Juvenile court (for certain offenses).
Sentence/Disposition If juvenile found guilty, judge has discretion to impose either adult or juvenile sanctions. For adult sentence, judge can impose up to adult mandatory term (prosecutor must file motion 10 days after petition filed asking judge to apply adult sanctions); OR Any juvenile disposition, up to age 18 or for 2 years, whichever is longer, unless discharged sooner.	***Sentence/Disposition*** Upon finding of guilt, juvenile court judge may impose (1) sentence in juvenile training school until age 21 and (2) sentence in excess of child's 21st birthday, to originate in the training school for youth and to resume in an adult correctional facility.	***Sentence/Disposition*** Permits a determinate sentence up to 30 years that extends across juvenile and adult correctional facilities. Note: The law has been challenged in two instances; in both instances, the Supreme Court of South Carolina did not strike the law down. However, the practical effects of the decisions have caused juvenile court judges not to exercise their authority under the statute.
Rights Jury trial, counsel, open hearing, bail.	***Rights*** Jury trial, counsel, open hearing, bail.	***Rights*** Jury trial, counsel, open hearing.

(Continued)

Addendum to Chapter 3: Blended Sentencing Statutes *(continued)*

Texas	**Virginia**
No special designation	No special designation
Age and Offense	***Age and Offense***
10, murder; capital murder; aggravated kidnapping; sexual assault; aggravated sexual assault; aggravated assault; aggravated robbery; injury to a child, elderly individual, or disabled individual; felony of deadly conduct involving discharging a firearm; certain offenses involving controlled substances; criminal solicitation; indecency with a child; criminal solicitation of a minor; criminal attempt to commit murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, and aggravated robbery.	14 and offense that would be felony if committed by adult.
Court	***Court***
Juvenile court (for certain offenses).	Criminal court (waived youth).
Sentence/Disposition	***Sentence/Disposition***
Permits determinate sentence up to 40 years that extends across juvenile and adult correctional facilities. For capital murder and for first-, second-, or third-degree felony offenses and for serious drug offenses, there are mandatory minimum sentences.	Criminal court judge can impose any criminal sentence or may deal with juvenile in manner prescribed for hearing and disposition of cases in juvenile court.
Rights	***Rights***
Jury trial, counsel, open hearing.	All rights.

Chapter 4

Correctional Programming for Juveniles Who Commit Violent or Other Serious Offenses

Trend: Correctional administrators are under pressure to develop programs as a result of new transfer and sentencing laws.

States and local jurisdictions are responding to increases in juvenile violence by (1) transferring more juveniles to the criminal court and (2) experimenting with disposition/sentencing options in both the juvenile and criminal justice systems. Moreover, increased emphasis on protecting the public and holding offenders accountable for their actions has resulted in dramatic shifts in correctional programming. These responses, individually and in concert, have placed extraordinary pressure on both adult and juvenile State correctional programs.

Adult correctional systems are increasingly challenged to develop programming for younger and more vulnerable inmates. Juvenile correctional systems are increasingly being burdened with older, more violent juveniles who are deeply committed to criminal lifestyles. In some cases, a third correctional system has been created for "youthful offenders." Inquiries into correctional options for serious, violent juvenile offenders revealed a wide range of correctional system responses, including:

- *Straight Adult Incarceration.* Juveniles sentenced as adults and incarcerated as adults with little differentiation in programming between juveniles and adults, even though some State Departments of Corrections (DOCs[4]) still attempt to classify inmates by age, offense, size, and vulnerability.
- *Graduated Incarceration.* Juveniles sentenced as adults but incarcerated in juvenile or separate adult correctional facilities until they reach a certain age, at which time they may be transferred to adult facilities to serve the remainder of their sentence or be released.
- *Segregated Incarceration.* Juveniles sentenced as adults but housed in separate facilities for younger adult offenders, usually 18–21 or 18–25 years of age, and occasionally with specialized programming.
- *Youthful Offenders.* Designating certain juveniles as "youthful offenders," with or without special programming or legal protections.
- *Back to Basics.* Enhancing the juvenile correctional system with a wide range of sanctions to hold juveniles accountable and protect the public.

Straight Adult Incarceration, or "Doing the Time": Juveniles Sentenced as Adults and Serving Time in Adult Prisons

Nearly all States allow juveniles sentenced as adults to be housed in DOC facilities either with younger adult offenders or in the general adult population and if the juvenile is at least a certain age (e.g., in North Dakota and California, no one under age 16 may be housed in an adult prison). Only six States (Arizona, Hawaii, Kentucky, Montana, Tennessee, and West Virginia) prohibit DOC commitment or require DOC housing to be separate from all adults (Lis, Inc., 1995). According to a survey of adult corrections departments, a 1-day count (June 30, 1994) of the juvenile inmate population (ages 13–15) housed in such institutions nationwide totaled approximately 250, with New Jersey and Florida housing the majority (109 and 39, respectively). Slightly more than 3,100 16- and 17-year-olds[5] were housed in adult correctional systems on that date, with Florida (740) and New Jersey (390) housing more than 35% of that total (Lis, Inc., 1995).

Graduated Incarceration, or "Minimizing the Impact of a DOC Commitment": Juveniles Sentenced as Adults but Who Begin Their Sentences in Juvenile or Separate Adult Institutions

Because increasingly younger juveniles are eligible to receive a DOC commitment (e.g., 14 years old), efforts are being made to develop alternatives that mediate the

[4] For easier reading, throughout this chapter we use the general designation "DOC" to refer to the State adult corrections system, regardless of the actual department name in a State.

[5] This number excludes reporting from Connecticut, New York, and North Carolina because 16- and 17-year-olds are considered adults in those States; South Carolina is also excluded because of insufficient age breakdown. Maryland did not report.

harshness of adult punishments for juveniles. These efforts have occurred as adult correctional systems, not accustomed or equipped to house younger juveniles, struggle with the new mandate to house them.

In this situation, juveniles sentenced as adults to a DOC commitment begin their sentence in a facility operated by the juvenile corrections department or in a separate facility for juveniles operated by the DOC until they reach a certain age, usually 18. At that time, the juvenile may be transferred to an adult facility to serve the remainder of the sentence or be released. The mechanism for that transfer or release decision varies by State.

Delaware

When a juvenile is sentenced in criminal court to the DOC, a joint placement decision between the DOC and the agency responsible for juvenile corrections determines whether the juvenile should be placed (until age 18) in a juvenile or adult correctional facility. The decision is made within 30 days of sentencing and is based on several factors, including the juvenile's age, offense, history, and behavior in detention. If confined in a juvenile facility, the juvenile must be transferred by his 18th birthday. However, at any point during confinement, an administrative review may be requested by any of the parties and, if appropriate, transfer may be made.

Georgia

In 1994, legislation excluded juveniles as young as age 13 from juvenile court jurisdiction for certain violent offenses and expanded the role of the DOC to provide "designated youth confinement units" for these juveniles as well as those waived to criminal court for aggravated assault. (Prior to 1994, the involvement of the DOC in housing juveniles was limited to a facility opened in 1992 to accommodate juveniles who, upon administrative review, were found guilty of assaulting youth care staff.) The confinement units will hold the most violent juveniles until they reach age 17, when they are transferred to regular adult facilities. Other juveniles waived to and convicted in criminal court remain the responsibility of the Department of Children and Youth Services until they turn 17. The confinement units are designed to ensure that juveniles are at all times housed separately from adults. Staff have specialized juvenile justice training. The DOC is currently reallocating facility resources and developing new ones to meet this new mandate. To the extent appropriations are available, the units are to provide life skills training, academic or vocational training, and substance abuse and violence prevention counseling.

Maryland

The Patuxent Youth Program within the Patuxent Institution (adult) was legislatively designated to handle waived juveniles ages 14 and older whose offenses are considered too serious for placement in regular juvenile facilities and who are considered too young for adult corrections. Treatment is multidisciplined and includes case management functions to better address the individual needs of the juveniles placed there. Although juveniles are not currently separated from adult inmates, there are plans to do so.

Missouri

In 1995, legislation allowed the criminal court to impose both a juvenile disposition and an adult criminal sentence, the execution of which is suspended pursuant to successful completion of the juvenile disposition. If the Department of Youth Services (DYS) believes that the juvenile is beyond the scope of its treatment programs, if the juvenile does not satisfactorily complete the disposition, or if he reaches the ages of 17 or 21, DYS may petition the court for a hearing. The court will either continue the juvenile disposition (only when the offender is younger than age 21), place on probation, or transfer custody to the DOC. If the suspension of the criminal sentence is revoked, all time served under the juvenile disposition is credited toward the criminal sentence imposed. Since 1995, legislation also mandates the DOC to establish correctional treatment programs by January 1, 1998, for offenders who are younger than 17 years of age. Such programs will physically separate offenders younger than age 17 from those who are older.

North Dakota

If a juvenile is convicted in criminal court and committed to the DOC, a five-person committee determines whether the juvenile should be placed in a juvenile or adult facility. The juvenile can be transferred in either direction at the discretion of the committee. Juveniles cannot be placed in an adult facility until age 16.

Ohio

Juveniles convicted in criminal court are incarcerated as adults. Legislation effective January 1, 1996, states that the DOC must house inmates ages 14–17 in a housing unit in a State correctional institution separate from inmates ages 18 years or older, if the juvenile observes the rules and regulations of the institution and does not otherwise create a security risk. If the DOC receives too few inmates under age 18 to fill a separate housing unit, inmates who are ages 18–20 may be assigned to the housing unit.

Oregon

A juvenile prosecuted as an adult (either through waiver or direct file) and committed to the DOC shall have his physical custody transferred to the Oregon Youth Authority (OYA) if the sentence will be completed prior to age 25 or if the DOC and OYA determine that because of his age, immaturity, mental or emotional condition, or risk of physical harm to himself, he should not be incarcerated initially in a DOC institution. Only physical custody is transferred; legal custody remains with the DOC. Whenever the OYA director, after consulting with the DOC, determines that the conditions or circumstances that warranted transfer are no longer present, physical custody will be returned to the DOC. This also applies to a juvenile under age 16 who is sentenced to the county jail. OYA added 320 secure beds to handle transferred juveniles.

Tennessee

In 1994, legislation required a transferred juvenile under age 16 to be housed in a juvenile facility until he reaches age 16 when, upon order of the committing court, he may be transferred to prison or maintained in the juvenile facility until age 18. Transferred juveniles ages 16 or older are to be housed in a juvenile facility unless the judge orders commitment to an adult facility. If the criminal court judge decides to transfer a 16-year-old to prison, the DOC must physically separate him from adult inmates until age 18.

Texas

In 1995, the legislature amended the State's determinate sentencing law (see Chapter 3). At the same time, they changed the rules for delivering determinate sentences, first in juvenile institutions and subsequently in adult correctional facilities. The previous system required the sentencing court to commit the juvenile to the Texas Youth Commission (TYC) and, if the sentence was not completed by age 17 ½, the court would hold a release/transfer hearing to determine whether to (1) recommit to the TYC without a determinate sentence, (2) transfer to the DOC for completion of sentence, or (3) discharge the juvenile.

The 1995 legislation eliminates the requirements for the release/transfer hearing. Neither the court nor the TYC is authorized to discharge a juvenile before completion of the determinate sentence. If the sentence is not completed by age 21 and the individual was not previously transferred to the DOC because of his conduct or to protect the public, the individual is automatically transferred without a hearing to the DOC to complete his sentence.

Utah

Juveniles convicted as adults and incarcerated will be placed in a facility operated by juvenile corrections on the grounds of an adult correctional facility.

Washington

The DOC and the juvenile corrections department have an interagency agreement that provides that any juvenile under age 16 convicted of a felony and committed to the DOC may be transferred, with consent of the juvenile corrections department, to a juvenile correctional institution until age 18.

West Virginia

Even though a section of the code permits the DOC to accept transferred juveniles as young as age 16 into its youthful offender programs, by administrative policy and interpretation of another code section that prohibits commingling people under age 18 with adults, it does not accept transferred juveniles into its system. The law provides that these youth can be housed in juvenile facilities until age 18, at which time the sentencing judge can order administrative transfer to an adult facility or discuss alternatives to prison or reduction of the sentence.

Segregated Incarceration, or "Separating the Men from the Boys": Designated Facilities for Young Adults and Juveniles Sentenced as Adults

Alternative correctional programming in the adult system separates young adult inmates from older adults. In these systems, the DOC designates certain secure facilities for young adult offenders who are 18–21 or 18–25 years of age. Some have special programs that go beyond what is available for the general adult population. Transferred juveniles sentenced in criminal court may be eligible for such facilities where they exist.

Florida

In 1994, legislation elevated the status of the longstanding youthful offender program within the DOC and provided authority to the State's Correctional Privatization Commission to establish contracts in FY 1994–95 for three youthful offender correctional facilities with capacities of up to 350 beds each. Juveniles convicted in criminal court may be sentenced to the youthful offender program. The legislature mandated that the youthful offender program must separate 14- through 18-year-olds from 19- through

24-year-olds in their facilities and provide an array of academic and vocational education, social skills development, and substance abuse and mental health treatment that in many ways duplicates the services available in the juvenile justice system.

South Carolina

For many years the State has supported a youthful offender division of minimum security institutions in its DOC for adult offenders ages 17–25 (the State's upper limit of original juvenile jurisdiction is age 16). At a minimum, the system provides physical separation of youthful offenders from older adults and enhances the opportunities for competency development, education, and treatment of offending behaviors. The 1994 legislation redefined the term "youthful offender" for the purpose of sentencing to include juveniles transferred to and convicted in adult court. However, through a longstanding contract between the DOC and the juvenile corrections department, all transferred juveniles begin their youthful offender or criminal sentences in juvenile facilities until age 17, when they are transferred to the DOC.

A longstanding statute has permitted the juvenile corrections department to transfer any juvenile under its charge to the youthful offender division of the DOC if he had not been released by the juvenile parole authority by age 19. Release authority transfers to the DOC, but in no case must the commitment extend beyond age 21. The 1995 legislation lowered the age that this type of transfer could be made to age 17 for juveniles adjudicated delinquent for certain violent offenses and maintained authorization to transfer based upon any type of delinquency adjudication at age 19. The 1995 version maintained authority to make the release decision within the DOC.

"Youthful Offenders": A Special Class of Offender

Another phenomenon that has occurred is the designation of certain juveniles as "youthful offenders" or some other special classification or status. Very often this designation provides special legal protections (e.g., sealing of records) if the juvenile successfully completes his sentence. Special programming (in either adult or juvenile correctional systems) may or may not be in place for these youth.

Colorado

In 1993, legislation established a youthful offender system (YOS) within the DOC that targets young felons found guilty of Class 3 through Class 6 felonies involving the use or threat of use of a deadly weapon. The YOS attempts to break down gang affiliations and negative peer influence and to instill a respect for self and others and the value of work and self-discipline. This is accomplished by firm, disciplined regimentation with a program of academics, work, interpersonal relations, mentoring, and prevocational skills within a positive peer culture.

In order to sentence a juvenile to the youthful offender system, the criminal court imposes a sentence to the DOC but suspends it, pending successful completion of a sentence to the YOS. A YOS sentence must be for a determinate period of no fewer than 2 years but no more than 6 years, with authority granted to the DOC to place the youthful offender under a period of community supervision (i.e., aftercare) for a period of no fewer than 6 months and up to 12 months any time after the youthful offender has 12 months or fewer remaining on the determinate sentence.

A court hearing is required to revoke the suspended sentence should the youthful offender meet criteria for revocation. The YOS does not accept juveniles convicted in criminal court of Class 1 or Class 2 felonies (they go directly to DOC prisons), sex offenders (both the juvenile and adult correctional systems have special programs), or offenders with mental illness or developmental disabilities. (The legislature's intent in establishing the YOS was to create a system for offenders whom the juvenile correctional system had failed. However, 85% of the juveniles committed to the YOS have never been seen by the juvenile correctional system because the majority of YOS cases come out of the child welfare system, rather than the juvenile justice system. The YOS has also not reduced commitment of violent juveniles to the juvenile corrections department, Office of Youth Services [Marler, 1996].)

YOS Principles

The principles of the Colorado YOS are stated as follows:

- Teach self-discipline by providing clear consequences for inappropriate behavior.
- Create a daily regimen that involves offenders in physical training, self-discipline exercises, education and work programs, and meaningful interaction.
- Provide staff models and mentors to promote the development of socially accepted attitudes and behaviors.
- Reinforce use of cognitive behavior strategies that change criminal thinking.
- Teach problem-solving skills that serve as alternatives to criminal activity.
- Create new group norms where positive peer influences promote behavioral change.

- Provide a "second last chance" to learn and develop positive self-concepts and the value of service to others.

YOS Components

The components of the Colorado YOS include four general categories:

- The Intake, Diagnostic, and Orientation (IDO) program (including a 30- to 45-day boot camp-like program) aims to break down gang affiliations and anti-authority attitudes.
- Phase I offers a range of core programs, supplementary activities, and educational and prevocational programs in an intensive residential program located at a secure facility for at least 8 months and up to 4 years and 11 months, depending on the determinate sentence.
- Phase II is a 90-day transition/prerelease phase with an emphasis on life skills, job development, and prevocational experience.
- Phase III involves 3 to 9 months of intensive community aftercare consisting of surveillance, monitoring, and educational and treatment programs (a 6- to 12-month period is being considered).

The institutional components of the YOS are located in Denver at a secure adult reception center, although the youthful offenders are separated from adults (except for incidental contact). Until the permanent specialized YOS facility is completed, four contract facilities accommodate overflow male and all female offenders. Youth Services International operates all four of these facilities, with a total bed space of 110. The programs are located in Missouri, Iowa, and South Dakota. The permanent facility will house 300 male and female YOS residents in IDO and Phase I. (See *Youth Offender System Annual Report and Recommendations* [Colorado Department of Corrections, January 1, 1996] for a complete program description.)

Kentucky

Transferred juveniles designated as "youthful offenders" begin their criminal sentences in a juvenile justice facility until age 18; at this time they are returned to criminal court, where the sentencing judge may authorize (1) placement on probation or conditional discharge, (2) a return to the juvenile facility for a final 6 months to complete the juvenile justice program prior to release, or (3) imposition of the criminal sentence with a transfer to a DOC prison.

The agency responsible for operating juvenile institutions (Human Services Cabinet) was also responsible for housing youthful offenders in its facilities until age 18. In 1995, the Governor ordered one of these juvenile institutions to be transferred to the Justice Cabinet, where the authority for adult corrections resides. However, the juvenile institution was not placed under adult corrections, but rather is an independent authority in the cabinet. The 50-bed facility reopened in the fall of 1995 to accommodate both youthful offenders (i.e., transfer juveniles) and delinquents who failed to adjust in other juvenile institutions. Legislation is pending to transfer all of the juvenile institutions from the Human Services Cabinet to a new juvenile corrections department in the Justice Cabinet, which also covers adult corrections and the State police.

New Mexico

Code changes in 1993 created three categories of juvenile law violators: serious youthful offenders (first-degree murder, which is an excluded offense), youthful offenders (see chapter 3), and delinquent offenders (all other delinquent offenses). Youthful offenders are handled exclusively by juvenile courts and must be detained pretrial in a juvenile detention facility. However, the juvenile court judge may sentence youthful offenders using either juvenile or criminal sanctions. A juvenile disposition may be to age 18 or for 2 years, whichever is longer, unless discharged sooner. The prosecutor must file a motion within 10 days after the petition is filed, asking the judge to apply adult sentencing provisions. At this time, the youthful offender designation is more definitional than programmatic. (See the following section for a description of New Mexico's plan for youthful offenders and other programming reforms.)

Wisconsin

In 1993, legislation required the DOC to create special programs for certain classes of juvenile delinquents labeled as youthful offenders. Mandated programs included a secure central facility and a range of community-based sanctions such as intensive probation, electronic monitoring, drug abuse outpatient treatment, and community service programs.

Before the law to establish the youthful offender program became effective, the legislature revised it by (1) changing the name to the "Serious Juvenile Offender Program" and (2) changing program eligibility criteria. In addition, the Governor's 1996 budget transfers responsibility for juvenile justice institutions from the Health and Human Services Department to the DOC. Effective July 1996, juvenile delinquents will be eligible for the serious juvenile offender program operated by a youth services division of the DOC if the following criteria apply: (1) The juvenile is age 14 or older and has been adjudicated delinquent for committing one of several felonies, including murder,

Historical Perspective on Youthful Offender Systems in California and New York

California

The California Youth Authority (CYA) has administered institutions for "youthful offenders" for a number of years, although the State does not have a specific legal definition as such. CYA operates three types of institutions, the selection of which is based on the person's age and the committing court:

- Juvenile institutions for juveniles younger than age 18 and committed from juvenile court.
- Swing institutions for criminal court commitments younger than age 18 or for juvenile court cases 18 years or older.
- Adult institutions for adults ages 18–25.

It should be noted that swing cases (criminal court cases under age 18 or juvenile court cases over age 18) may "program" in either juvenile or adult institutions. Program differences in the three types of institutions include a Young Boy's Program at one of the juvenile institutions for the very young juvenile court commitments (ages 12–14) and more extensive vocational/work experience programs at the adult institutions.

Recent legislation prohibits the criminal court from committing any adult (i.e., ages 18–25) to the CYA. The criminal court may commit a "remanded" juvenile (e.g., 14–17 years old and found unfit for juvenile court) to the CYA if the sentence does not extend beyond the juvenile's 25th birthday. If the sentence exceeds the juvenile's 25th birthday, the criminal court must commit the juvenile to the DOC but may recommend housing in the CYA. The criminal court may also commit a remanded juvenile to the DOC, except that a juvenile under age 16 may not be committed to prison.

For any disposition involving a DOC commitment with Youth Authority housing, CYA may accept or reject a referral after review of submitted documents and based on established codes and/or regulations.

New York

New York is one of only three States in which age 16 is the age of criminal responsibility and one of only a few States in which juveniles as young as age 13 can be processed as adults. Children ages 13–15 will be criminally processed under the Juvenile Offender (JO) designation if they fit certain criteria, unless the judge removes the case to family court (by reverse waiver). As of 1995, JO's were (1) 13-year-olds charged with second-degree murder, a Class A–1 felony; and (2) 14- and 15-year-olds charged with second-degree murder, arson 1, or kidnapping 1 (a Class B felony or a Class C felony).

Juveniles sentenced as JO's receive mandatory minimum sentences. JO's begin serving their sentence in a secure facility administered by the Division for Youth (DFY), with transfer to the Department of Correctional Services (DCS) at age 21, unless earlier the director of the DFY certifies that the youth cannot benefit from its programs.

In New York, Youthful Offender (YO) status may be given to 16- to 19-year-olds. YO's are adults under New York Penal Law, processed in criminal court for certain felony or misdemeanor offenses, and sentenced to the DCS. Persons with a previous felony conviction as a juvenile or an adult are ineligible for YO status. In addition, YO status may be granted to certain JO's who are under age 16 (i.e., a 14- to 15-year-old JO charged with a Class B or Class C felony). These juveniles are considered JO/YO's.

YO status grants a juvenile or young adult special legal protections (i.e., a private hearing and a sealed record), is less stringent, and gives the offender a second chance. Sentencing for a YO can take one of two courses, depending on the nature and seriousness of the crime. A YO given a sentence of less than 1 year will serve the time in a local correctional facility or county jail. A YO given a sentence of 1 year or more may serve the sentence in a medium- to maximum-security facility. A YO or JO/YO could also lose his or her driver's license or vehicle registration at the judge's discretion.

first-degree sexual assault, armed robbery, and armed burglary; and (2) the juvenile court judge finds that the only other disposition that is appropriate for the juvenile is placement in a secure correctional facility.

Concerning the Serious Juvenile Offender Program, the DOC must provide (1) supervision, care, and rehabilitation that is more restrictive than ordinary supervision in the community; (2) component phases that are intensive and highly structured; and (3) a series of component phases for each participant that considers public safety and the juvenile's need for supervision, care, and rehabilitation. To achieve these objectives, the DOC must develop a range of secure correctional facilities, child care institutions, foster care, group care, and intensive probation and community corrections programs. Furthermore, if the juvenile is over the age of 17 and has committed a Class A felony, he must be placed in prison for 1 year and can be incarcerated to age 25. The DOC can, without a hearing, transfer to prison any program participant over the age of 17 who violates a condition of the program. The minimum commitment to the Serious Juvenile Offender Program is 2 years, with an additional year of parole.

"Back to Basics": Enhanced Juvenile Correctional Systems

Some States that have not abandoned the offender-based rehabilitative ideal of the juvenile justice system have geared up to hold juveniles accountable for their actions by developing a wide range of graduated sanctions in juvenile corrections programming (see Krisberg, Hawkins, et al., 1995). Examples include intensive probation, electronic monitoring, day treatment, private residential and nonresidential programs, and specialized programs for sex offenders and other violent juvenile offenders.

Some States have undertaken ambitious capital developments to incarcerate more juveniles in the juvenile justice system. Extensive institutional development, some directly related to recent "get tough" legislation, is occurring in Florida, Illinois, Massachusetts, Texas, and Virginia (Loughran, 1996). Other States have developed special programs or initiatives through subsidies or direct grants to community-based agencies and courts to provide alternatives to commitment to State training schools. Two examples include the Kansas Day Treatment Programs and the Reclaim Ohio Program, which provides subsidies to counties to divert juvenile felony offenders from commitment.

Some States have also given the juvenile court the authority to sentence certain juveniles for a longer period of time than ever before possible. Examples include statutory provisions that (1) raise the age of the juvenile court's extended jurisdiction, (2) impose mandatory minimum sentences, or (3) provide for blended sentencing that tacks on a suspended commitment to the DOC or a sentence beyond the court's extended jurisdiction. In light of these trends, the following examples highlight State efforts to enhance their juvenile correctional systems.

Alabama

Four new boot camp-style programs have been developed to increase the range of dispositions available to rural delinquents.

Arkansas

The training school was closed in favor of five new experiential/wilderness programs for delinquents classified at the diagnostic center as serious juvenile offenders. The 1995 legislation gives the Division of Youth Services the task of creating these serious offender programs.

Colorado

In addition to funding the Youthful Offender System in the DOC, the legislature also allocated funding to enhance the juvenile correctional system administered by the Office of Youth Services (OYS). The OYS restructured its programming to hold juveniles more accountable by expanding restitution, community service, and work programs pursuant to a doubling of community placement resources. To accommodate longer sentences, the legislature appropriated $30 million for capital construction and additional money for an enhanced education program in the largest training school. Other enhancements include a special unit for mentally ill/emotionally disturbed juvenile offenders, alternatives to incarceration and detention, a detention screening project, and a pilot project to develop common risk and need assessment instruments throughout the system (diversion, probation, and corrections).

Connecticut

The legislature passed a comprehensive reform measure to address serious, violent juvenile crime as well as promote prevention by adopting the basic principles of the "balanced approach" to juvenile justice: public safety, youth accountability, and competency development. The legislation expands community-based programs and increases residential slots for hard-core juvenile offenders. It also places responsibility for juvenile programs with the Judicial Department's Office of Alternative Sanctions, which administers a well-developed adult program (Lawlor, 1995; Judicial Branch et al., 1996).

Florida

In 1994, legislation provided for some of the Nation's toughest transfer laws and balanced them with a system of blended sentencing across juvenile, youthful offender, and adult corrections from the criminal court venue. In addition to these legal mechanisms, the legislature allocated more than $200 million for juvenile justice reform to address chronic and violent delinquency. The legislature also removed the responsibility for juvenile corrections programs from the large human services umbrella agency and elevated the function to department level. It mandated that the juvenile corrections department develop a five-level, rather than a four-level, security classification, which would feature at its highest level new maximum-security facilities for the most serious juvenile offender. Under Florida law, criminal court judges may adjudicate a transferred juvenile as a delinquent with commitment to the juvenile corrections department. Judges have discretion to order a security level and can be assured that if they commit to the highest level, the commitment will be for at least 18 months and up to 36 months, and may be extended to age 21 for the purpose of completing the program. (See Florida's youthful offender description, above.)

Also in 1994, legislation established an Alternative Education Institute in the Governor's Office and authorized the Institute to contract with private providers for alternative education programs in residential settings and to pay for the construction of these programs with public education capital outlay (PECO) funds. Thirty million dollars were appropriated in 1994 to construct an alternative education facility based on the Glen Mills model and, in the meantime, to reserve 100 beds at the Glen Mills School in Pennsylvania for Florida placements until the facility could be built. The new facility is expected to be completed by 1998.

In 1995, legislation established and appropriated $6.35 million for a 125-bed Juvenile Assignment Center for the temporary placement of juveniles committed to moderate-, high-, or maximum-risk programs. The intent of the act was to provide comprehensive behavioral and vocational assessment of juveniles that will result in more accurate placement decisions while also relieving detention overcrowding.

Idaho

In 1995, legislation created the Department of Juvenile Corrections, which transferred responsibility for juvenile corrections from the welfare department. Effective October 1, 1995, aftercare and alternatives to secure confinement became responsibilities of the counties, where the thrust is on the "balanced approach." In a rare funded mandate, monies that had gone to health and welfare went to counties by way of unrestricted block grants, and half of a 10-cent cigarette tax went to county juvenile justice programs. Ada County (Boise) received more than $1 million from these sources and is allocating the money for local services to chronic, serious, and violent juvenile offenders.

Kansas

In 1995, legislation created the Kansas Youth Authority (KYA) with a mission to review and recommend a structure for the State's juvenile justice system and provide community-based alternatives to institutionalization for serious, violent juvenile offenders. The legislature provided great latitude for the development of the KYA, which is to produce a report by July 1, 1997.

Louisiana

The juvenile division of the DOC opened a 350-bed boot camp facility for juveniles awaiting secure care. In 1995, the capacity was expanded to more than 400 beds, and both a short-term program and a long-term program were created within the facility.

Maryland

The Department of Juvenile Justice, in an effort to broaden its continuum of services for serious delinquents, opened five "enhanced security" units at the training school and one transitional unit on the open campus. Clients are males ages 14 or older who are considered serious, violent, or habitual offenders. Delinquent youth who have failed in less restrictive settings and substance abusers are also suited for this program.

Mississippi

The juvenile corrections department received a $10-million appropriation in 1995 to construct a 100-bed medium-security facility for females, a 150-bed medium-security facility for males, and a 15-bed maximum-security facility for females. The appropriation was established so that the juvenile justice system could provide medium-level options to their secure facilities and open campuses.

New Mexico

In September 1995, the Governor announced "Restoring Justice," a plan to reform New Mexico's juvenile correctional system. Examples of the continuum of services for the most dangerous juveniles include two work camps that focus on building occupational skills in forestry, conservation, or ranching; a 50-bed boot camp; and a secure facility. Other residential programming includes transitional living units for juveniles who cannot stay at home or who are reentering the community and regional multipurpose facilities that offer emergency treatment, secure rooms, and shelter space for juveniles who must be detained or who need a safe place to stay. Infrastructure components include continuous classification and case management systems. The guiding principle of the plan is to give justice to victims, to the community, and to offenders and their families through accountability, restitution, rehabilitation, and community involvement (New Mexico Children, Youth and Families Department, 1995).

Pennsylvania

The Department of Public Welfare, charged with administering the Commonwealth's public institutions for delinquents, plans to add four facilities for serious, violent juveniles. This plan addresses overcrowding in the youth development centers due to increased commitments of older, more violent juveniles to these facilities. These juveniles also pose risks to other juveniles and disrupt programs that might help other offenders who are more amenable to treatment. The 4 facilities include two 50-bed maximum-security facilities for males ages 16–20, a 64-bed secure facility for females, and a 16-bed secure facility for

emotionally disturbed juvenile males. The DOC will operate a 500-bed maximum-security prison for juveniles sentenced in criminal court.

Ohio

In 1993, the legislature responded to increases in juvenile crime and the dangerous overcrowding within its juvenile correctional facilities by enacting "Reclaim Ohio." The program's goals were to reduce commitments to the Department of Youth Services (DYS) and increase community-based services for nonviolent felony delinquents. As anticipated, DYS could provide longer treatment services to the most serious, violent juvenile offenders without overcrowding the institutions. The program provides subsidies to counties to provide community-based services and purchase beds from the State for more serious juvenile offenders. For counties that decrease commitments, new monies will be available in the counties' subsidy appropriation. "Reclaim Ohio" puts the money, and therefore the decisionmaking, into the hands of local judges, who can choose to "buy" incarceration or community services.

Oregon

In 1995, legislation declared the primary role of the juvenile justice system to be public protection and the guiding principles to be personal responsibility, accountability, reformation, and restitution. It also established the Oregon Youth Authority (OYA), with broad responsibility for correctional facilities (with different custody levels), probation and parole, and community out-of-home placements. OYA must prepare a reformation plan for each juvenile based on the seriousness of the offense and prior history. OYA is authorized to establish eight regional youth accountability camps (military basic training with a cognitive restructuring program and a drug and alcohol component) and four regional residential academies (secure, closed campuses that provide education, job and life skills training, and vocational and apprenticeship training). The legislature, in declaring a dire shortage of medium- and maximum-security facilities, enabled an emergency process to expedite the siting of two new facilities.

Texas

In 1995, legislation encouraged local juvenile justice officials to establish seven-step systems of increasing sanctions for juvenile delinquents. Sanction levels 6 and 7 involve Texas Youth Commission (TYC) commitments. At sanction level 7 (for juveniles given a determinate sentence), the TYC is mandated to provide a highly structured residential program lasting 1–10 years (depending on the age of the juvenile and the sentence), followed by close parole supervision for not less than 1 year.

Considerations With Respect to New Correctional Programming

Statewide responses to serious and violent juvenile offenders are often predicated upon the actual construction of new secure institutions to house these offenders, increasingly in the adult correctional system. Several issues have emerged with respect to secure programming for these juveniles:

- *Turf issues.* Some critics within the juvenile justice system contend that had they received the resources necessary to improve their system, they could have done an equally good job, or a better job, at less cost.
- *Funding/capacity issues.* Few States have a good plan for paying for the proposed new facilities. Most have not been built and there is speculation that they may not be built. Moreover, there is some indication that States building new 300–500-bed facilities to confine juveniles convicted of violent offenses are finding that not nearly that number are being transferred and sentenced to the criminal justice system.
- *Programming issues.* Adult corrections departments are being asked to develop programs for a population they neither want nor have the expertise to address.

The extent to which probation has been viewed as a critical resource for enhancement is a variation on the turf issue. In some States, reform efforts have overlooked probation as a legitimate alternative sanction in addressing violent juvenile offenses; the emphasis instead is on building institutional capacity. Where there has been a strong juvenile court constituency, probation has been the recipient of additional funds for program enhancement or is at least being considered an active participant.

Legislatures in at least two States passed provisions to enhance probation services in either granting subsidies for additional staff (Texas) or statutorily setting caseload sizes and allocating funding for additional officers (Arizona, 35:1 for probation; 25:1 for intensive probation). In addition, a recent forum on contemporary challenges in juvenile probation urged probation organizations and leaders to "overcome the resistance to change . . . and take an active role in shaping juvenile justice reform. . . . They should also promote a system of juvenile justice that facilitates full restoration of offenders to the community emphasizing the accountability of the offender to the victim and the community and the responsibility of the community to the offender" (Thomas, 1995).

Summary

The justice system has shifted its emphasis to holding juveniles accountable for the seriousness of their offenses. While some States have incorporated that position into a balanced approach that includes protecting the public, restoring the community, and enhancing the offender's competencies, many others have moved to a clear-cut punishment theme. In keeping with either of those themes, States are incarcerating more juvenile offenders for longer periods and redefining more of them as adults. The realization that punishment is more certain, proportionate, longer, or more effective in the adult system is not at all clear. The significant policy issues facing the juvenile justice system over what to do about serious and violent juvenile offenders must be debated with the best outcome information available.

References

Colorado Department of Corrections. *Youthful Offender System: Annual Report and Recommendations*, January 1, 1996.

Krisberg, B., D. Hawkins et al. *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, June 1995.

Lis, Inc. "Offenders Under Age 18 in State Adult Correctional Systems: A National Picture." *Special Issues in Corrections*. Longmont, CO: U.S. Department of Justice, NIC Information Center, February 1995.

Loughran, E. J., Executive Director, Council of Juvenile Correctional Administrators, personal communication, May 1996.

Lyons, D. "Juvenile Crime and Justice State Enactments 1995." *State Legislative Report*, 20(17), November 1995.

Marler, B., Director of Program Services, Colorado Office of Youth Services, conversation, March 1996.

New Mexico Children, Youth and Families Department. *Restoring Justice, Juvenile Corrections Reform: Executive Summary*. 1995.

Thomas, D. *Results of the Juvenile Probation Officer Initiative's Contemporary Challenges Forum*. Pittsburgh, PA: National Center for Juvenile Justice, 1995.

Chapter 5

Confidentiality of Juvenile Court Records and Proceedings

Trend: Traditional confidentiality provisions are being revised in favor of more open proceedings and records.

Along with the changes discussed in previous chapters—jurisdictional authority, sentencing, and correctional options—come significant changes in how the juvenile justice system treats information about juvenile offenders, and particularly serious and violent juvenile offenders.

Issues relating to confidentiality of juvenile court proceedings and their records have existed for decades. A system that rehabilitates and protects minors from the stigma of youthful indiscretions was not a problem when those indiscretions were of a minor nature. However, as juvenile crime became more serious, community protection and the public's right to know began to displace confidentiality as a bedrock principle.

Moreover, law enforcement, child welfare, schools, and other youth-serving agencies see the same subset of juveniles under juvenile court jurisdiction. Accordingly, the need to share information across systems is apparent. As a result, we have seen a concerted effort to promote information-sharing partnerships among juvenile courts, probation departments, law enforcement, prosecutors, schools, and youth-serving agencies (see Search Group, 1982; and Rapp, Stevens, and Clontz, 1989). The rationale for sharing information among system actors with a "need to know" is a better coordinated and more efficient service delivery system that avoids duplication of services and better utilizes shrinking resources.

The fundamental issue with respect to sharing juvenile records and opening proceedings is balancing the need to protect a juvenile's right to privacy with the need to assure the community's safety and provide needed services and supervision. Figure 7 illustrates the dynamic tension generated by trying to balance these competing positions.

Recently, significant activity has occurred among State legislatures with respect to confidentiality issues. Analysis of statutes enacted from 1992 through 1995 reveals several distinct trends in the disclosure, use, and destruction of juvenile records and the openness of juvenile court proceedings. These trends represent a definitive shift in the use and management of information, with notable impact on juvenile justice processing—particularly as it relates to juvenile records and proceedings.

Juvenile Court Proceedings

Traditionally, juvenile court proceedings have been informal and distinguished from the criminal court hearing by exclusion of the general public. The model Standard Juvenile Court Act of 1959 stated that:

> The privacy of the hearing contributes to a casework relationship, and avoidance of the spectacle of a public criminal trial is especially advantageous in children's cases. This hearing should have the character of a conference, not of a trial. . . . The hearing is private, not secret . . . the reference to persons who have "a direct interest in the work of the Court" includes newspaper reporters who should be permitted, indeed, encouraged to attend hearings, with the understanding that they will not disclose the names or other identifying data of the participants (NCCD, 1959).

One commentator reviewing the U.S. Supreme Court decisions on the matter of confidentiality suggested that "while the Court has required procedural reform which has resulted in a general tendency to equate a juvenile and a criminal procedure . . . it has continued to shield perhaps the most paternalistic of all the juvenile court's procedures [the public trial]" (Hurst, 1985). Another commentator

Figure 7

Opening Juvenile Court Records and Proceedings Generates Dynamic Tension

Protect the Juvenile	vs.	Protect the Community
Right to Privacy	vs.	Right to Know
Separate and Distinct Juvenile Justice System	vs.	One System for Criminal Justice

noted that the U.S. Supreme Court has never proclaimed a constitutional right of confidentiality for alleged delinquents, and the trend in cases that have gone before the Court on this issue makes it unlikely that one will be crafted, despite the Court's long-time acceptance of confidentiality as a part of the juvenile justice rehabilitative model (Martin, 1995).

In response to the debate over confidentiality as a part of juvenile proceedings, the National Council of Juvenile and Family Court Judges (NCJFCJ) recently declared that:

> Traditional notions of secrecy and confidentiality should be re-examined and relaxed to promote public confidence in the court's work. The public has a right to know how courts deal with children and families. The court should be open to the media, interested professionals and students and, when appropriate, the public, in order to hold itself accountable, educate others, and encourage greater community participation (NCJFCJ, 1995, p. 3).

Since 1992, State legislatures have increasingly called for a presumption of open proceedings and the release of juvenile offenders' names. (See figure 9 at the end of the chapter for a list of States that passed legislation from 1992 through 1995 addressing juvenile court records and proceedings.)

Public Juvenile Hearings

Many States passed laws that either open juvenile court hearings to the public generally or for specified violent or other serious crimes. In addition, some statutes set age restrictions. From 1992 through 1995, 10 States passed legislation that modified or created statutes that open juvenile proceedings (see figure 9). In all, 22 States require or permit open juvenile court hearings of cases involving either juveniles charged with violent or other serious offenses or juveniles who are repeat offenders (see figure 8).

Release/Publication of Juvenile's Name

While many States permitted access to juvenile court proceedings, many prohibited publishing a juvenile's name unless the juvenile was charged with a violent or other serious offense. However, since 1992 several States have passed legislation that gives the general public and/or media access to the name and address of a minor adjudicated delinquent for specified serious or violent crimes; in some cases, this also applies to repeat offenders. In all, 39 States now permit the release of a juvenile's name and/or picture to the media or general public under certain conditions.

Juvenile Court Records

There are two types of juvenile court records: legal and social. Legal records include court petitions, complaints, motions, transcripts of testimony, findings, orders, decrees, and other information introduced and accepted as evidence. Social records typically include documents and reports received or prepared by the probation officer or other designated authority, which have been requested by a juvenile court inquiring into the past behavior, family background, and personality of an alleged or adjudicated juvenile delinquent (Vereb, 1980). These records track the outcomes of intake proceedings, preliminary hearings, detention hearings, arraignments, adjudication and disposition hearings, reviews, and social investigations as well as the juvenile's conduct and progress as to the court's orders. In addition to these court records, juveniles are the subjects of law enforcement records, including fingerprints, photographs, offense reports, and investigation reports. Juveniles are also the subjects of education records, records of psychological or psychiatric examinations, and medical records.

With respect to serious and violent juvenile offenders, State legislatures have made changes to juvenile court records in the following areas: access to or disclosure of information, use of information, and the sealing or expungement of records.

Disclosure of Juvenile Court Records

Formerly private, juvenile court records are increasingly available to a wide variety of people. The "need to know" argument requires proper disclosure of information among youth-serving agencies. Many States open juvenile court records to school officials or require that schools be notified when a juvenile is taken into custody for all crimes of violence or crimes in which a deadly weapon is used. Legislatures also require that victims be given notice of activities such as release, escape, or the setting of hearing dates. Some States lowered the age for which juvenile court records may be made publicly available. Descriptions of information-sharing statutes follow.

Information-Sharing Statutes in California, Florida, and Virginia

California

In 1995, the legislature reaffirmed its belief that juvenile court records, in general, should be confidential. However, they did provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to ensure rehabilitation of juvenile offenders

Figure 8

Summary of Current Confidentiality Provisions Relating to Serious and Violent Juvenile Offenders, 1995

State	Open hearing	Release of name	Release of court record[1]	Fingerprinting	Photo-graphing	Offender registration	Statewide repository[2]	Seal/expunge records prohibited
Alabama			X	X	X		X	
Alaska		X	X	X		X	X	
Arizona	X	X	X	X	X	X		
Arkansas		X	X	X	X		X	
California	X	X	X	X	X	X	X	X
Colorado	X	X	X	X	X	X	X	X
Connecticut			X	X	X			
Delaware	X	X	X	X	X	X	X	X
District of Columbia			X	X	X			
Florida	X	X	X	X	X	X	X	
Georgia	X	X	X	X	X		X	X
Hawaii			X	X	X		X	
Idaho		X	X	X	X		X	
Illinois		X	X	X	X	X	X	
Indiana	X	X	X	X	X		X	
Iowa	X	X	X	X	X	X	X	
Kansas	X	X	X	X	X	X	X	
Kentucky				X	X		X	X
Louisiana	X	X	X	X	X		X	
Maine	X	X	X			X	X	
Maryland			X	X	X		X	
Massachusetts	X	X	X	X	X		X	
Michigan		X	X	X	X	X	X	X
Minnesota	X	X	X	X	X	X	X	X
Mississippi		X	X	X	X	X		
Missouri	X	X	X	X	X		X	
Montana	X	X	X	X	X	X	X	X
Nebraska		X	X	X			X	
Nevada	X	X		X	X		X	X
New Hampshire		X	X					
New Jersey		X	X	X	X	X	X	
New Mexico	X			X	X		X	
New York				X	X		X	
North Carolina			X	X	X			X

(Continued)

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Figure 8 (continued)

Summary of Current Confidentiality Provisions Relating to Serious and Violent Juvenile Offenders, 1995

State	Open hearing	Release of name	Release of court record[1]	Fingerprinting	Photo-graphing	Offender registration	Statewide repository[2]	Seal/expunge records prohibited
North Dakota		X	X	X	X		X	
Ohio				X	X	X	X	
Oklahoma	X	X	X	X	X		X	X
Oregon		X	X	X	X	X	X	X
Pennsylvania	X	X	X	X	X	X	X	
Rhode Island		X	X			X	X	
South Carolina		X	X	X	X		X	X
South Dakota		X	X	X	X		X	X
Tennessee		X	X	X	X	X	X	
Texas	X		X	X	X	X	X	X
Utah	X	X	X	X	X	X	X	
Vermont				X	X		X	
Virginia		X	X	X	X	X	X	
Washington	X	X	X	X	X	X	X	X
West Virginia		X	X	X				X
Wisconsin		X	X			X	X	
Wyoming		X	X	X	X		X	X

Legend: X indicates the provision(s) allowed by each State as of the end of the 1995 legislative session.

Table notes:

[1] In this category, **X** indicates a provision for juvenile court records to be specifically released to at least one of the following parties: the public, the victim(s), the school(s), the prosecutor, law enforcement, or social agency; however, all States allow records to be released to any party who can show a legitimate interest, typically by court order.

[2] In this category, **X** indicates a provision for fingerprints to be part of a separate juvenile or adult criminal history repository.

Source: Szymanski, Linda. *Special Analysis of the Automated Juvenile Law Archive.* National Center for Juvenile Justice, 1996.

as well as to lessen the potential for drug use, violence, and other forms of delinquency (Sec. 827, W & I Code). Another section of the legislation pertains to disclosure to schools of juvenile court records involving serious acts of violence (Sec. 828.1), stipulating that dissemination be as limited as possible and be consistent with the need to work with a student in an appropriate fashion and the need to protect school staff and students.

Section 827 allows the following individuals to have access to juvenile court records:

- Court personnel.
- District attorney.
- City attorney or city prosecutor.
- Minor's parent(s) and attorney(s).
- Judges, referees, and other hearing officers.
- Probation officers.
- Law enforcement officers.
- School superintendent.
- Child protection agencies.

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- Members of child's multidisciplinary teams.
- Persons or agencies providing treatment or supervision of the minor.
- Any other person designated by the court order.

Information must not be disseminated by the receiving agencies to other than those identified above, nor may any of the information be made attachments to any other documents without judicial approval, unless used in connection with and in the course of a criminal investigation.

The superintendent of the public school district in which the minor is enrolled will receive written notice (juvenile's name, offense, and disposition only) that a minor has been found by a court to have committed any felony or misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, assault or battery, larceny, vandalism, or graffiti. The superintendent shall transmit the notice to the principal, who shall then pass it on to any school counselor, teacher, or administrator for the purpose of rehabilitating the minor and protecting students and staff. Intentional violation of the confidentiality provisions of this section constitutes a misdemeanor punishable by a fine not to exceed $500. Any information received from the court must be kept in a separate confidential file at the school until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches age 18, whichever occurs first, when the record must be destroyed.

Section 828 pertains to disclosure of information gathered by law enforcement as well as release of descriptive information about minor escapees. Any information gathered by law enforcement relating to taking a minor into custody may be disclosed to another law enforcement agency, including school police or security department, or any person or agency that has legitimate need for the information for purposes of official disposition of a case. When a minor escapes from a secure detention facility, the law enforcement agency shall release the name of, and any descriptive information about, the minor to a person who specifically requests this information. The information may be released without request if the information is either necessary to assist in recapturing the minor or necessary to protect the public from substantial physical harm.

Florida

Among other sweeping juvenile justice reforms in 1994, Florida passed legislation enhancing information sharing. For example, fingerprints of juveniles charged with or adjudicated for a felony and certain misdemeanors must be submitted to the Department of Law Enforcement, which is required to maintain criminal history records of juveniles until age 24 (or age 26 if the juvenile has been classified as a serious habitual offender (SHO)).

To help track mobile violent offenders, the legislation required the Department of Juvenile Justice to notify the sheriff when a juvenile adjudicated for a violent misdemeanor or felony is relocated. The legislation also removed age restrictions for the release for publication of the names, addresses, and photographs of juveniles charged with felony offenses or those adjudicated for three or more misdemeanors.

The 1994 reform also requires arresting authorities to notify school superintendents in all cases in which a juvenile is taken into custody for a felony offense or crime of violence. The school superintendent must notify the child's immediate classroom teacher(s).

In 1995, Florida passed legislation requiring the Department of Juvenile Justice to develop a new statewide juvenile justice information system and appropriated $8.2 million to fund the effort for hardware and staff support. The legislation also established an information-sharing workgroup of the Departments of Education, Juvenile Justice, and Law Enforcement to develop and implement a statewide system for sharing information with school districts, State and local law enforcement agencies, service providers, clerks of the circuit court, and the Departments of Education and Juvenile Justice. Information sharing targets (1) juveniles involved in the juvenile justice system, (2) juveniles tried as adults and found guilty of felonies, and (3) students with serious school discipline problems.

Virginia

According to a 1996 Virginia Commission on Youth report, one of the most active areas of legislative reform in the State in recent years has been confidentiality of juvenile records maintained by courts, schools, and police. The legislation (1) expanded access to juvenile court records by schools and the circuit court, (2) provided for the sharing of records among local law enforcement agencies, (3) gave notice to victims of court dispositions and release dates for some juvenile offenders, (4) allowed public notice for dispositions of violent crime and juvenile escapees, (5) required fingerprints of juveniles ages 14 or older who are charged with a felony, and (6) warranted disclosure of juvenile court records to limit firearms ownership eligibility.

The legislation also required certain juvenile offenders to register with authorities to protect victims or the general public. For example, 1994 legislation states that under special conditions in which the victim is physically helpless or mentally incapacitated, jailers must notify the

State police upon release of an offender, and the offender is responsible for registering with the State police. The State police are also required to maintain a registry for sex offenders separate and apart from all other record systems.

Despite these reforms, which are spread throughout the juvenile code, the report states that many inconsistencies exist about who can receive what type of information. This has caused confusion among service providers, as well as practical problems, given the limited automation capacity of the majority of juvenile courts. The commission recommends a comprehensive study by the legislature, law enforcement, judiciary, and relevant public agencies of current statutory provisions with regard to confidentiality and release of information resulting in a coherent policy for the Commonwealth (Virginia Commission on Youth, 1996).

Notice to Schools

A subset of the disclosure issue is notification rights of both schools and victims (Chapter 6 of this report discusses victims). This represents another area of increased openness of juvenile court information. A typical statute requires that the school district be notified when a juvenile is taken into custody for a delinquent act involving a crime of violence or in which a deadly weapon was used. From 1992 through 1995, several States enacted or modified their statutes with respect to notice to schools (see figure 9). (Legislation giving broader juvenile court records access to schools is included in the earlier section on disclosure.)

Use of the Records

One of the most significant issues with regard to juvenile court and law enforcement records is the effective use of those records. Aside from disclosing or sharing information across systems for the purpose of better coordinating services, legislatures have made provision in four other areas of juvenile record use: centralized repositories/fingerprinting and photographing, targeting serious habitual offenders, criminal court use of defendant's juvenile record, and registration laws.

Centralized Repository of Juvenile Record Histories/Fingerprinting and Photographing

Statewide central repositories of criminal history records have existed for at least two decades. Central repositories can include adult records only, adult records separate from juvenile records, or adult and juvenile records combined. Centralized databases facilitate and support law enforcement operations. Police argue that juveniles mirror adults in their mobility; hence, juvenile records should be a part of adult criminal record databases because they are essential for conducting statewide record checks. Those advocating separate databases for juvenile records argue that once the distinction is lost between adult and juvenile records, it will also be lost in practice. Furthermore, it is argued that if juvenile records are not criminal records, they should not be used as such.

As of 1994, 27 States enacted laws authorizing establishment of a central record repository to hold juvenile arrest and/or court disposition records from throughout the State; 4 of these States (Hawaii, Mississippi, Oklahoma, and Virginia) authorize a separate juvenile record center (Miller, 1995). Even when not available to the public, juvenile court records can become part of the State criminal recordkeeping system. In some States, a juvenile tried as an adult may have his criminal history record stored in the central repository. Fingerprints most often serve as the basis of the record. Forty-four States provide for a separate juvenile or adult criminal history repository, again usually based on fingerprints (see figure 8).

Proponents of fingerprinting argue that fingerprinting ensures accuracy in identifying a specific individual as the subject of a court disposition or arrest report (Miller, 1995). Forty-six States and the District of Columbia allow police to fingerprint juveniles who have been arrested, usually juveniles who have reached a specific age or have been arrested for felony offenses; four States (Maine, New Hampshire, Rhode Island, and Wisconsin) make no mention of fingerprinting juveniles in their statutes or court rules. Forty-three States and the District of Columbia allow photographing of juveniles (mug shots for criminal history files) under certain circumstances (see figure 8).

Since 1992, quite a few States have expanded the conditions under which a juvenile may be fingerprinted or photographed. Many States also increased the ways that this information can be used (see figure 9).

Targeting Serious Habitual Offenders by Sharing Information

One of the most widespread areas of change has occurred in State and local jurisdiction efforts to target, for the purpose of swift certain action, juvenile offenders who are the most serious, chronic, and violent, as well as youth at risk for such behaviors. While the emphasis in the past has been to "tail, nail, and jail" these offenders, the change has been in the direction of multiagency collaboration, information sharing, intervention and prevention strategies, and focusing attention and resources on this small but dangerous population. These efforts most frequently fall under the Serious Habitual Offender Comprehensive Action Program

(SHOCAP) model that was originated and developed by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Descriptions of programs operating in California, Florida, Illinois, and Virginia follow.

California

The legislature established SHOCAP in the late 1980's and has one of the oldest operating programs in Oxnard. In targeting SHO's, the legislature supported increased efforts by the juvenile justice system to identify these offenders early in their careers and to work cooperatively to investigate and record their activities, prosecute them aggressively, sentence them appropriately, and supervise them intensively. The legislature also supported increased efforts to gather and disseminate data to allow for more informed decisions by all juvenile justice system agencies.

Section 503 of the California Welfare and Institutions Code stipulates policies for each of the participating agencies: law enforcement, district attorney, probation, and school district. Section 504 stipulates that juvenile court judges shall authorize the inspection of court, probation, protective services, district attorney, school, and law enforcement records by the law enforcement agency charged with compiling SHOCAP data in the format used by all participating agencies.

Law enforcement agencies take the lead in gathering data on identified SHO's, compiling the data into a usable format for all participating agencies, and updating and disseminating data to the agencies. In several counties, the District Attorney's Office/Juvenile Division is the lead agency in coordinating the countywide program.

Another program in California that takes interagency sharing to new levels is the Tri-Agency Resource Gang Enforcement Team (TARGET), operating in seven locations throughout Orange County. The model involves colocating multiagency (i.e., police, probation, and prosecutor) resources at a police facility, increasing both the frequency and quality of interagency communication and cooperation in attacking identified gang problems. The program recently expanded to include Federal Alcohol, Tobacco, and Firearms agents. The city of Santa Ana operates three versions of the program: STOP (Street Terrorist Offender Project); STOP II, which added the school district as a partner; and Short STOP, a gang prevention program for at-risk juveniles (1994 annual reports of STOP and Gang Unit & Multi-Agency Resource Gang Enforcement Teams).

Florida

In 1990, the legislature enabled local jurisdictions to maintain a central identification file on juvenile SHO's and those at risk of becoming SHO's. The file should contain, but is not limited to, pertinent school records (including information on behavior, attendance, and achievement) and pertinent information on delinquency and dependency matters maintained by law enforcement, the State attorney, and case management agencies. In its first-year report, the Department of Juvenile Justice announced partnership efforts with law enforcement, education, and local communities to concentrate services at SHOCAP sites in three counties; implement efforts for the SHOCAP system in eight other counties; and revitalize efforts in two other counties, one being Dade County (Miami). Current SHOCAP efforts feature intensive crime prevention efforts along with the SHOCAP mainstays of surveillance and information sharing among juvenile justice agencies.

In addition to local central file systems maintained by sheriffs, since 1990 the Department of Juvenile Justice has been mandated to develop a system to assess the problems of juvenile SHO's and provide a special program of 9 to 12 months of intensive secure residential treatment followed by a minimum of 9 months of aftercare. Each provider is required to keep a central file for the SHO's, which may contain information collected from local justice authorities in addition to the treatment record. The treatment record is confidential.

Illinois

In 1992, legislation created SHOCAP, enabling the juvenile justice system, schools, and social service agencies to make more informed decisions about juveniles who repeatedly commit serious delinquent acts. The same legislation adds a section stating that nothing in the Abused and Neglected Child Reporting Act and the Juvenile Court Act prevents the sharing or disclosing of information or records of juveniles, subject to the provisions of SHOCAP when that information is used to assist in the early identification and treatment of habitual juvenile offenders.

Virginia

In 1993, the legislature authorized any county or city in the Commonwealth to, by action of their governing body, establish a SHOCAP enabling juvenile and criminal justice systems, schools, and social service agencies to make more informed decisions about juveniles who repeatedly commit serious crimes. The legislature also established boundaries for information sharing and protections from civil or criminal liability for legitimate participants in the local programs. The Department of Criminal Justice Services is required to issue statewide SHOCAP guidelines and provide technical assistance to local jurisdictions implementing SHOCAP systems.

Criminal Court Use of Defendants' Juvenile Records

Every State provides for prosecutor and/or court access to juvenile records of adult defendants at some point in the judicial process (Miller, 1995). However, according to the National Institute of Justice study, only 24 States provide for structured consideration of defendants' juvenile records in setting sentences, such as using the juvenile record to calculate a criminal history score. Considerable variation exists in the method for calculating the juvenile history score and in the weight accorded juvenile dispositions in adult criminal history scores (Miller, 1995).

Registration

Since 1992, 17 States amended adult criminal registration laws to include juvenile registration for specific offenses. One group of laws requires the registration of sexually violent offenders. Another allows the collection of blood and saliva specimens for DNA purposes from juvenile offenders adjudicated for unlawful sex offenses and murder. In some States, these DNA records either are not sealed or are automatically made a part of the adult system. In California, juvenile arson offenders must also register. In all, 25 States require juvenile registration for specific offenses as of 1995 (see figure 8).

Sealing/Expungement of Juvenile Court Records

Most legislatures have made provisions for disposing of a juvenile's legal or social record. Generally, these provisions characterize a number of issues regarding what can be done with juvenile court records. Statutes stipulate the method(s) of record disposition (e.g., sealing, expunging, or destroying) and the conditions that must be met, usually providing for the sealing of records for a given time period and then, at the expiration of that time, the destruction of those records. In some cases, the statute interchangeably uses terms that have inherently different meanings. For example, the terms "expunge" and "seal" are sometimes used interchangeably although the common meaning of "expunge" is to destroy or erase information and the common meaning of "seal" is to conceal but not destroy information (Vereb, 1980).

The most common provision provides that the record be sealed within a given period of time after the court's jurisdiction has expired or the program of commitment has been completed. After a record is sealed, it will typically be destroyed when an additional period of time has lapsed. The usual procedure for record expungement or sealing requires a petition by the record's subject or a motion of the court with notice and hearing requirements. In some States, sealing is automatic with the passage of time and compliance with specified conditions, for example if the juvenile does not commit a subsequent offense.

Statutes also address the procedures for disposing of juvenile court records. Typically, the statute reflects whether the record subject (the juvenile) or the court initiates the process, whether interested parties are to be notified, whether a hearing is necessary on the matter, or whether the disposition occurs without the intervention of some moving party (Vereb, 1980). Statutes also stipulate the effect of sealing or expunging the record. Traditionally, provisions allowed all references of the proceeding to be removed from official agency files or permitted the juvenile to respond in the negative on future applications as to whether he was ever convicted of any crime. Some statutes also vacate the original order and findings. In effect, proceedings are treated as if they never occurred, and the court, law enforcement, and all other agencies are permitted to reply to inquiries that no record exists (Hurst, 1985).

Since 1992, some States that allow the sealing of juvenile court records after a number of years have increased the number of years that must pass before sealing is allowed. In other States, if a juvenile has committed a violent or other serious felony, his or her juvenile record cannot be sealed or expunged.

A few States have enacted laws that permit/require juvenile court records to be kept beyond the juvenile's age of majority. In Florida, for example, the criminal history record of a minor classified as a serious or habitual juvenile offender must be retained for 5 years after the offender reaches age 21. Minnesota recently increased the age for which juvenile court records must be kept (from age 23 to 28). Virginia passed a joint resolution in 1995 to study the retention of juvenile records and develop recommendations for the 1996 legislative session that balance the need to use juvenile records for sentencing with a policy for protecting the confidentiality of those records as much as possible. As of 1995, 25 States had statutes or court rules that either increase the number of years for which a serious and violent offender's record must remain open or prohibit sealing or expungement of the record (see figure 8).

Considerations With Respect to Confidentiality Provisions

Confidentiality provisions protect the majority of juvenile offenders whose nonserious cases are dismissed or who never come before the court a second time. However, State legislators are opening the doors and records of juvenile courts to restore public confidence in the juvenile justice

system and to send the message to juveniles who commit violent or other serious offenses that such behavior will not be tolerated and that the juvenile justice system will not protect them from that indiscretion. Effective and efficient administration of juvenile and criminal justice requires that it be that way. Along with such changes come some concerns surrounding record quality and disclosure.

Quality of Records

Few would dispute that the quality and completeness of juvenile and adult criminal records vary considerably between States and even within States. Most juvenile codes provide police with little guidance on whether to create an arrest record, and virtually no guidance on what to include in those records (Hurst, 1985). Moreover, although juvenile codes prescribe the contents of legal and social records, many do not address the subject of record quality. (For a discussion of record quality, see "Model Statute on Juvenile and Family Court Records," NCJFCJ, 1980; "Open vs. Confidential Records," BJS/Search Group, 1988; and "Data Quality of Criminal History Records," Search Group, Inc., 1985.) Furthermore, when juvenile records become part of a central repository, violation of privacy issues becomes paramount, considering that most juveniles who come in contact with the juvenile justice system do so only once. Certainly for these juveniles, an inaccurate record is worse than no record.

Disclosure

One of the major issues with regard to disclosure of records is less of philosophy than of management: Who is entitled to receive what type of record, at what stage of the proceedings, to achieve what end? (Hurst, 1985). The larger argument with respect to open hearings and public records is not around the need to know, but whether open government requires such actions. With respect to sharing information, a coordinated plan for using the information makes the release or disclosure of information more productive.

A related concern centers on the reporting of pre-adjudicatory (e.g., arrest) information without a subsequent requirement to report the outcome of the adjudication hearing. Although arrest information may be vital to law enforcement and school officials, its retention without a parallel recording of the outcome of the hearing can result in unfair and damaging assumptions about the behavior of the juvenile.

Open Proceedings

Many juvenile court practitioners have serious reservations about opening proceedings to the public and the media, fearing a circus atmosphere and an onslaught of curious spectators in already crowded courtrooms. In fact, there are indications from several States that such situations have not occurred. The more likely scenario is that the public and the media will lose interest in all but sensational cases. Nevertheless, concerns remain with respect to open hearings. Certainly the need for courtroom security should be paramount when the public is allowed access to juvenile proceedings, particularly access to hearings involving gang members. Second, juvenile court judges should have the authority to close those proceedings they deem necessary to protect either the victim (e.g., cases involving sexual assaults or when the victim fears retaliation) or the offender (e.g., cases involving mentally incompetent juveniles).

References

Bureau of Justice Statistics/Search Group. "Open vs. Confidential Records." *Proceedings of a BJS/SEARCH Conference.* Washington, DC: Bureau of Justice Statistics, November 1988.

Hurst, H. *Confidentiality of Juvenile Justice Records and Proceedings: A Legacy Under Siege.* Pittsburgh, PA: National Center for Juvenile Justice, 1985.

Martin, G. "Open the Doors: A Judicial Call to End Confidentiality in Delinquency Proceedings." *New England Journal of Criminal and Civil Confinement,* 21(2)(1995), 393–410.

Miller, N. "State Laws on Prosecutors' and Judges' Use of Juvenile Record." *NIJ Research in Brief,* November 1995.

National Council of Juvenile and Family Court Judges. *Children and Family First: A Mandate for America's Courts.* Reno, NV: NCJFCJ, 1995.

National Council of Juvenile and Family Court Judges. "Model Statute on Juvenile and Family Court Records." *Juvenile and Family Court Journal,* 32(1)(1981).

National Council on Crime and Delinquency. *Standard Juvenile Court Act, Sixth Edition.* New York: NCCD, 1959.

Orange County District Attorney's Office. *1994 Annual Report: Gang Unit & Multi-Agency Resource Gang Enforcement Teams.* Santa Ana, CA: June 1995.

Rapp, J. A., R. D. Stephens, and D. Clontz. *The Need to Know: Juvenile Record Sharing.* Malibu, CA: National School Safety Center, 1989.

San Diego County District Attorney's Office. *Serious Habitual Offender Program: North County Training Seminar Curriculum,* April 26, 1995.

Santa Ana Police Department. *S.T.O.P. 1994 Annual Report.* Santa Ana, CA: 1995.

Search Group, Inc. *Criminal Justice Information Policy: Privacy and Juvenile Justice Records.* Sacramento, CA: Search Group, Inc., 1982.

Search Group, Inc. *Data Quality of Criminal History Records.* Washington, DC: Bureau of Justice Statistics, October 1985.

Vereb, T. *The Creation, Dissemination and Disposition of Juvenile and Family Court Records: 1980 Statutes Analysis.* Pittsburgh, PA: National Center for Juvenile Justice, 1980.

Virginia Commission on Youth. *Study of Juvenile Justice Reform.* House Document No. 37. Richmond, VA: Commonwealth of Virginia, 1996.

Figure 9

States Modifying or Enacting Confidentiality Provisions, 1992–1995

Juvenile Court Proceedings: *Modifications, 1992–1995*	States Making Changes	Examples
Public juvenile hearings (10 States)	CA, GA, IN, LA, MN, MO, NV, PA, TX, UT	*Missouri:* 1995 legislation makes public juvenile court hearings when juvenile is accused of Class A or Class B felony, or if juvenile was previously adjudicated for two or more unrelated Class A, Class B, or Class felonies. *Texas:* 1995 legislation requires that juvenile court hearings be open to the public unless good cause is shown by the court to exclude the public.
Release/publication of juvenile's name (11 States)	CA, DE, FL, GA, ID, IL, LA, MS, NH, ND, VA	*Mississippi:* 1995 legislation stipulates that names and addresses are not confidential for juveniles twice adjudicated delinquent for felony or unlawful possession of firearms.

Juvenile Court Records: *Modifications, 1992–1995*	States Making Changes	Examples
Disclosure of juvenile court records (21 States)	AK, AR, CO, FL, IN, IA, KS, LA, MI, MN, MO, NJ, ND, OK, PA, SC, TN, UT, WA, WI, WY	*Arkansas:* 1993 legislation clarified that records of juvenile arrests, detentions, and court hearings are confidential and not subject to disclosure unless juvenile is being formally charged in criminal court with felony.
Notice to schools (13 States)	FL, GA, ID, KS, LA, MD, NJ, NC, OH, UT, VA, WA, WI	*Georgia:* 1995 legislation provides for prompt written notice to school superintendent when juvenile is adjudicated for second or subsequent time or for designated felony.
Centralized repository of juvenile record histories/fingerprinting and photographing (26 States)	AK, AZ, AR, CT, FL, GA, HI, ID, IA, MD, ME, MN, MO, MT, NV, NJ, ND, OH, OR, PA, SC, TN, TX, UT, VA, WI	*Arkansas:* 1994 legislation authorizes Arkansas Crime Information Center to collect and maintain juvenile arrest information for allegations and adjudications for which juvenile code authorizes fingerprints be taken and maintained.
Criminal court use of defendant's juvenile record (9 States)	AZ, CT, FL, LA, OH, PA, TN, TX, WA	*Tennessee:* 1995 legislation provides that adult sentences be enhanced if person was adjudicated delinquent for felony.
Registration (17 States)	AK, AZ, CA, CO, FL, IA, KS, MN, MS, MT, NJ, OR, PA, TN, TX, VA, WI	*Florida:* 1994 legislation includes juveniles in sex offender category.
Sealing/expungement of juvenile court records (8 States)	AR, CA, CT, MD, NC, OK, OR, VA	*North Carolina:* 1994 legislation requires that juvenile court records of juveniles adjudicated for certain felonies may not be expunged.

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Chapter 6

Victims of Juvenile Crime

Trend: Victims of juvenile crime are being included as "active participants" in the juvenile justice process.

For most of the first century of the juvenile justice system's existence, the role of the victim in juvenile justice proceedings has been extremely limited. Consider, for example, a description of the philosophy of the juvenile court in a 1982 document published by OJJDP:

> The court is founded on the principle of *parens patriae* under which the court attempts to act as a wise guardian on behalf of the State providing for the care, custody, and discipline of the child who is not receiving these at home. In seeking thus to act in the child's best interest . . . the court may be less interested in determining whether a child is guilty of a specific offense than in determining what the needs of the child are and then finding the most appropriate resource to meet these needs (NIJJDP, 1982).

This traditional perception of the mission of the juvenile court excludes juvenile crime victims from consideration. Indeed, according to the traditional paradigm of juvenile justice, the actual guilt of the offender, much less the rights or needs of the victim, was often not of much interest to the court. To see how far the juvenile justice model has shifted with regard to victims in just 10 years, consider the description of the Balanced Approach/Restorative Justice (BARJ) project funded by OJJDP in 1992. The BARJ model is founded on the belief that justice is best served when the community, victim, and youth receive balanced attention, and all gain tangible benefits from their interactions with the juvenile justice system. The objectives of community protection, offender accountability, and competency development are realized within a sanctioning and community supervision system that emphasizes restitution, community service, and mediation; skill-building work experiences; and a continuum of consequences. The BARJ framework provides an explicit role for the victim in juvenile justice:

> When an offense occurs, an obligation to the victim incurs. Victims and communities should have their losses restored by the actions of offenders making reparation and victims should be empowered as active participants in the juvenile justice process (OJJDP, 1992).

Victims as Active Participants

The inclusion of victims as "active participants" in the juvenile justice process represents a reaction to the increasing seriousness of offenses committed by juveniles. As a result, it reflects a fundamental shift in both juvenile justice philosophy and practice. Philosophically, active involvement by victims is made possible by a shift in fundamental assumptions about the nature of justice in general and juvenile justice practice in particular (see figure 10).

Figure 10

Traditional and Emerging Models of Justice

Traditional	Emerging (BARJ)
■ Crime is an act against the State, a violation of the law, an abstraction	■ Crime involving a victim is personal, an act against another person, a violation of the community.
■ Offender accountability is defined in terms of punishment and retribution.	■ Accountability is defined as assuming responsibility for actions and making an effort to repair harm.
■ Crime is solely an individual act with individual responsibility.	■ Crime has both individual and social dimensions of responsibility.
■ Victims are peripheral to the justice process.	■ Victims are central to the process of resolving a crime.
■ Crime prevention and deterrence are goals achieved by imposition of pain through punishment.	■ Reconciliation and restoration are goals achieved through mediation and restitution.

(Bazemore and Umbreit, 1995)

In practice, including victims in juvenile justice proceedings has had dramatic consequences, not the least of which is the requirement that practitioners incorporate the needs, rights, and wants of yet another actor into an already crowded arena. For example, Wisconsin's Juvenile Justice Study Committee recommended in 1995 that the State legislature make specific changes that increase the victim's role and the system's response to the victim by:

- Permitting victim attendance at any juvenile court hearing relating to the act, subject to the same restrictions as under current law for attendance at a fact-finding or dispositional hearing.
- Permitting the victim of a misdemeanor (or felony) offense to make a statement before sentencing or disposition and permitting the victim of a delinquent act to make a statement before the court enters into a consent decree in a delinquency proceeding.
- Permitting law enforcement agencies, without a juvenile court order, to disclose to the victim or the victim's insurer any information in its records relating to any injury, loss, or damage suffered by the victim, including the name and address of the juvenile's parents.
- Requiring that the juvenile court intake worker provide notice of the procedure for obtaining the juvenile's name and police records, the potential liability of the juvenile's parents for the juvenile's acts, and information regarding the status of the case, including informal dispositions and consent decrees.

Inclusion of the victim in juvenile justice proceedings also has implications for the disposition of cases. Restitution, community service, and victim/offender mediation, for example, become integral components of the juvenile court's dispositional philosophy and hence the dispositions ordered by the court. Inclusion of these dispositions changes the very nature of the work of juvenile probation and juvenile court service providers, as well as the relationships between the juvenile court, the juvenile offender, the community, and the victim.

The criminal justice system has taken the lead in addressing victim issues. In fact, many States have made great efforts over the past decade to increase the responsiveness of the criminal justice system to meet the needs of victims of adult crime. As a result of enacting a victim's bill of rights, many States developed guidelines for the cost-effective delivery of victim services at the local level. Unless otherwise stated, however, most items in the victim's bill of rights do not apply to victims whose offenders are handled in the juvenile justice system.

The Rights and Roles of Victims of Juvenile Crime

Since 1992, there has been a trend by State legislatures to increase the rights of victims of juvenile crime. Legislative research for this chapter identified 22 States that recently enacted legislation addressing victims of juvenile crime. The legislation, which increases the role of the victim in the juvenile process in a number of ways, encompasses:

- Including victims of juvenile crime in the victim's bill of rights.
- Notifying the victim upon release of the offender from custody.
- Increasing opportunities for victims to be heard in juvenile court hearings.
- Expanding victim services to victims of juvenile crime.
- Establishing authority for victims to submit a victim's impact statement.
- Requiring victims to be notified of significant hearings (e.g., bail, disposition).
- Providing for release of the name and address of the offender and the offender's parents to the victim upon request.
- Enhancing sentences if the victim is elderly or handicapped.

The following subsections highlight recent legislation that responds to victims of juvenile crime.

Alabama

In 1995, legislation created a victim's bill of rights that applies to juvenile crimes. The law also establishes specific procedures for enforcing victims' rights in both the juvenile and criminal justice systems.

Alaska

In 1994, legislation provided that upon a victim's request, that victim will be notified when a minor is released from a juvenile facility.

Arizona

In 1995, legislation created a victim's bill of rights that applies to juvenile crimes.

California

In 1995, legislation enhanced the rights of victims to express their views in juvenile court hearings and expanded the group of people who qualify as victims to attend juvenile court hearings.

Connecticut

In 1995, legislation expanded victim services to include victims of juvenile crime.

Florida

In 1992, legislation established rights of juvenile crime victims to receive information about proceedings and to be present and heard. Other legislation amended guidelines for the fair treatment of victims and witnesses in the criminal justice system to also encompass the juvenile justice system, authorizing a direct-support organization to assist juvenile crime victims as well as adult crime victims. The 1995 legislation requires the juvenile detention facility administrator to notify certain victims or appropriate next of kin of the defendant's release on bail.

Georgia

In 1992, the legislature established authority for victims to submit to the juvenile court a victim impact statement, which the juvenile can rebut. The authority is granted when a juvenile is charged with committing a felony offense that caused physical, psychological, or economic injury, or with committing a misdemeanor that resulted in serious physical injury or death. The impact statement may be used by a prosecutor or judge during any stage of the proceedings against the juvenile, including predisposition plea bargaining, sentencing, or determination of restitution.

The 1992 legislation also requires court orders of restrictive custody whenever the juvenile is found to have committed one of several serious (designated) felony acts on a person age 62 or older. Under the State sentencing law for serious (designated) felony acts passed in 1994 (see chapter 3), such a juvenile must be placed in custody for 1 year and can be held up to 5 years or to age 21.

Idaho

In 1995, legislation included victims of juvenile crimes in the victim's bill of rights.

Iowa

In 1995, legislation added a provision that the Department of Human Services is to notify the victim of the release or escape of a violent sexual predator.

Louisiana

In 1993, the legislature enhanced the status of victims in the juvenile justice system. Initial reforms included a declaration that juvenile justice interventions for serious offenders are designed to protect the public above all other considerations. They also established rights for victims, such as the right to expect a secure waiting area at court separate from alleged perpetrators of violence and the right to expect information concerning case progress from county prosecutors. The basic set of rights for victims was enhanced in 1995 to increase the responsibility of local prosecutors for delivering services to victims, including discussion and consideration of the impact of crime on individuals and its significance for court dispositions.

Minnesota

In 1995, legislation required that when a juvenile detained for a crime of violence or an attempted crime of violence is scheduled for a bail hearing, the victim is to be notified. In 1993, legislation provided that victim rights apply to victims of juvenile crime.

Montana

In 1995, legislation required notification of and consultation with victims of juvenile felony offenders.

New Mexico

In 1993, legislation stipulated that if a youthful offender or serious youthful offender (see chapter 3) commits a felony against a person age 60 or older, or against a person who is handicapped, the sentence may be increased by 2 years.

North Dakota

In 1995, legislation required that victims and witnesses of juvenile crimes are entitled to the same rights in juvenile delinquency proceedings as in any other proceeding.

Pennsylvania

An interdisciplinary juvenile justice task force drafted recommendations for an improved system of services to juvenile crime victims in 1995. The task force recommended that each county form a Victim/Witness Service Steering Committee composed of the district attorney, juvenile court judge, chief probation officer, and victim advocacy group representative. The committee is to review the current status of victim services; ascertain the role and responsibility of the various parties in the provision of such services; and monitor service provision on an annual basis, identifying areas of need and improvement strategies. The steering committee is encouraged to look at means of

serving victim needs outside the historic juvenile justice system, such as victim/offender mediation (PCCD, 1996).

South Dakota

In 1995, legislation stated that the victim can request in writing, and the prosecuting attorney shall provide, the name and address of any juvenile adjudicated delinquent and the name and address of that juvenile's parent, guardian, or custodian.

Texas

In 1995, legislation enhanced the rights of juvenile crime victims such that victims have a right to attend hearings, and county juvenile boards may appoint a victim assistance coordinator to ensure that victims receive written notice of rights and information on compensation.

Utah

In 1995, legislation included victims of juvenile crime in a victim's bill of rights.

Virginia

In 1995, legislation required that upon request from the victim, the Department of Youth and Family Services must provide advance notice of a juvenile sex offender's anticipated date of release from commitment. Also in 1995, the legislature passed a comprehensive victim's bill of rights to ensure that the full impact of crime on victims is brought to the attention of the courts and that crime victims and witnesses are treated with dignity, respect, and sensitivity.

Wyoming

In 1995, legislation added victims and members of their immediate families to the list of people allowed to attend closed juvenile hearings. The court or the prosecuting attorney may release the name of the minor, the legal records, or disposition in any delinquency proceeding filed in juvenile court to the victim and/or members of the victim's immediate family.

Considerations With Respect to Victims of Juvenile Crime

There has been significant movement in the involvement of victims in the legal processing of juvenile offenders, both in the juvenile court and for that subset transferred to the criminal court. This chapter has detailed the nature and direction of much of that change.

As compared with other areas of reform dealing with violent juvenile crime, the area pertaining to victims is less integrated and more diverse. This is the result, in part, of the emerging nature of victim issues: it is an area new to the legislature and the court, and it has a long way to go in its development. It may also be true, however, that the wide range of victim enhancements is the result of a continuing ambivalence among both victims and the official system regarding an appropriate role for their involvement. In either case, it can be anticipated that victim issues will continue to be discussed and modified as an essential piece of processing serious and violent juvenile offenders in the justice system.

Extent of Victim Involvement

One particular issue that continues to surface in discussions with both victim advocates and justice professionals is a solid measure of the extent to which victims desire direct involvement in system processing. In all situations, victims should be encouraged, but never forced, to participate. Practitioners should be sensitive to the fact that some innovations (e.g., face-to-face mediation) may, if not carefully conducted, further victimize this group.

An Issue of Fairness

A second concern raised during the investigation for this report centered on the fairness issue with regard to restitution and victim reparation. With an increasing acceptance of restitution as an essential (if not singular) component of offender accountability comes a parallel concern about safeguards for limiting restitution obligations. System professionals have voiced concerns about the court becoming involved in what begins to look like small claims proceedings in civil court or negotiations with insurance companies about their responsibility to repair damages caused by juvenile crime. Although the idea of reparative justice is embraced by all, the practice of the concept is less than fully developed.

In a related issue, the practice of restitution as a measure of accountability must be clear as to who must be accountable. In at least one State, strong sentiments supporting restitution were embedded in a revision to the State's juvenile code, while in a related piece of legislation, the dollar limit of a parent's liability for the acts of the juvenile was increased by many thousands of dollars. There is clearly legislative uncertainty as to who is intended to be held accountable, which confuses the issues of reparation to the victim.

Summary

Many States have made great strides over the past decade to heighten the level and quality of services provided to crime victims. For the most part, these efforts focused on victims of crime committed by adults, thereby overlooking an important facet of the problem—victims of juvenile crime. This represents a significant portion of crime victims because about 28% of all personal crimes (not murder) and 10% of all homicides are attributed to juvenile offenders (Snyder, Sickmund, and Poe-Yamagata, 1996; Snyder and Sickmund, 1995).

Fortunately, State legislators recognize that the impact on victims, particularly the victims of violent or other serious crimes by juveniles, is no less traumatic or consequential than on victims of adult crimes. Recent interest in the "restorative justice" model, which promotes maximum involvement of the victim, the offender, and the community in the justice process, also provides impetus for change.

References

Bazemore, G. and M. Umbreit. "Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime." *Crime and Delinquency*, 41(3) (July 1995), 296–313.

Juvenile Justice Study Committee. *Juvenile Justice: A Blueprint for Change*. January 1995.

Juvenile Justice Task Force. *Victim Services: The Current System and the Need for Improvement*. Harrisburg, PA: Pennsylvania Commission on Crime and Delinquency, 1996.

National Institute for Juvenile Justice and Delinquency Prevention. *Facts About Delinquency: A Citizens Guide to Juvenile Justice*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, November 1982.

Office of Juvenile Justice and Delinquency Prevention. *Introducing: The Balanced Approach and Restorative Justice Project*. Washington, DC, 1992.

Pennsylvania Council on Crime and Delinquency. *Juvenile Justice Task Force Report of Victim Services Subcommittee*. Harrisburg, PA January 1996.

Snyder, H. and M. Sickmund. *Juvenile Offenders and Victims: A National Report*. Washington, DC: U.S. Department of Justice, 1995.

Snyder, H., M. Sickmund, and E. Poe-Yamagata. *Juvenile Offenders and Victims: 1996 Update on Violence*. Washington, DC: U.S. Department of Justice, 1996.

Chapter 7

Selected Case Studies

It is clear from conversations with juvenile justice planners, prosecutors, judges, legislators, and corrections administrators across the country that public fear—more precisely, the fear of being killed by a young person—was the driving force behind recent changes to stem the tide of violent crime by juveniles. Frequently, legislatures responded to that fear with proposals to get even, punish, or hold juveniles accountable. Quite often the responses were couched in rhetoric such as "If they can kill like an adult, they can be treated just like an adult" or "If you do the crime, you do the time."

Nevertheless, recent legislative changes encompass a wide range of approaches to addressing public fear. The ones that appeared more positive took a long-term view and went beyond only retributive responses that increased punishment/accountability for juveniles who commit violent or other serious crimes. This chapter highlights reforms of States that took either a moderate approach by tackling a piece of the problem or a more comprehensive approach by retooling their juvenile justice system.

Arkansas: A Rural Response to Violent Crime by Juveniles

In 1994, the legislature convened a special session on crime, with a focus on reforming the juvenile justice system. Prior to this, the Governor's law enforcement summit provided direction for the legislative changes that, among other reforms, accomplished the following:

- Increased the number of crimes for which 14- and 15-year-olds may be direct filed.
- Granted the Governor the authority to waive statutory requirements to comply with Federal guidelines for the detention of minors.
- Created three new dispositional options for juvenile court judges, one of which granted judges authority to sentence delinquents to detention (Tanner, 1995).

The legislature also created exceptions to confidentiality standards for juvenile court records and required fingerprints and photographs of juveniles who commit certain violent offenses. Furthermore, they made soliciting a minor to join a criminal gang a crime, broadened the definition of "delinquent" to include possessing a handgun on school property, and upgraded the penalty for furnishing juveniles with certain types of deadly weapons. Finally, through legislative and executive branch efforts, the training school for delinquents was closed, and five publicly and privately operated experiential/wilderness programs were established for serious juvenile offenders.

To address widespread concern among child and juvenile justice advocates that policy discussions did not consider prevention, the Governor held a summit that culminated in the creation of an executive council for children and families to coordinate and inform prevention efforts. The 1995 legislative session subsequently passed several new program measures to prevent delinquency. For example, they:

- Established a system of delinquency prevention and intervention grants for Arkansas school children.
- Passed a $9-million community work and youth recreation bill.
- Appropriated funds to establish new therapeutic group homes and independent living programs for status offenders and delinquents.
- Established a clearinghouse to collect and distribute program ideas concerning youth crime prevention across the State.

Connecticut: A Comprehensive Reform Package

The legislature passed a comprehensive reform measure that shifted a 40-year-old system designed to deal primarily with shoplifters and truants to one equipped to address violent juvenile crime as well as promote prevention (Lyons, 1995). Informed by the Governor's Anti-Crime Initiative, OJJDP's Comprehensive Strategy (Wilson and Howell, 1993), and an assessment of programs and services, Public Act 95–225 reflects the basic principles of the "balanced approach" to juvenile justice: public safety, youth accountability, and competency development. The act expands community-based programs and increases residential slots for hard-core juvenile offenders. Other key components accomplished the following:

- Placed responsibility for juvenile programs with the Judicial Department's Office of Alternative Sanctions (which administers a well-developed adult program).

- Gave law enforcement and prosecutors access to formerly confidential juvenile records.
- Mandated development of risk assessments, professional evaluation teams, and prevention and early intervention programs.
- Created a mechanism for transferring 14- and 15-year-olds to criminal court on serious felony charges.
- Created a special procedure for serious juvenile repeat offenders to allow sentencing under juvenile and adult codes (see chapter 3).
- Transferred prosecutorial jurisdiction for juvenile crime from the Judicial Department to the Division of Criminal Justice, effective July 1, 1996.
- Required designated executive and judicial branch departments to devise a State reorganization plan.
- Established a legislative task force to study the operations of prosecutors and public defenders (Lawlor, 1995; Judicial Branch et al. 1996).

Florida: A Broad Range of Reform in Response to Violent and Chronic Delinquency

Florida represents an example of a State that passed broad-based legislation over the course of the past 5 years that included attention not only to holding juveniles accountable but also to preventing juvenile delinquency. Throughout the reform process, special focus was placed on the State agency responsible for most of the services to delinquents.

In 1990, the legislature created a commission to monitor and review the implementation of long-range juvenile justice reforms under the Juvenile Justice Reform Act of 1990. From 1990 through 1992, about $70 million was appropriated to establish hundreds of new delinquency, alcohol, drug, and mental health placement slots ranging from secure residential and nonsecure residential programs to day treatment and community supervision. However, during this period efforts were frustrated by delays in funding and the inability of the human services umbrella agency, which at the time was responsible for juvenile justice programs, to rapidly implement new programs and treatment slots (Langton, 1993).

Frustration over slow resource development by the human services agency and public pressure to address violent juvenile crime led to significant reforms in 1993. The legislature changed the laws with respect to information sharing among public and private agencies; enhanced penalties for the use and possession of weapons by minors; and appropriated $50 million to establish additional delinquency, drug, and mental health placement beds. In 1994, the legislature transferred the responsibility for delinquency programs from human services to a new department-level authority devoted solely to juvenile justice. The reform bill also targeted chronic and violent juvenile offenders with measures that:

- Gave prosecutors a greater range of direct file authority (see chapter 2).
- Gave criminal court judges the option to sentence juveniles to juvenile, youthful offender, or adult correctional systems (see chapter 3).
- Enhanced enforcement and Racketeering Influenced Corrupt Organization (RICO) prosecution of juvenile criminal street gangs.
- Created a new maximum-risk security level for juveniles (see chapter 4).
- Relaxed confidentiality standards for juvenile records.
- Created a plan for a continuum of boot camp interventions in juvenile justice and youthful offender systems.

The 1994 reform bill also addressed the philosophy of the juvenile justice system in Florida; enhanced prevention, truancy, and alternative education programs; provided for local-option curfews and parental responsibility and liability; and expanded detention criteria (Frith, 1994). In 1995, the legislature appropriated funds to reinforce the juvenile justice continuum they established in the preceding year. Once again, millions of dollars were allocated for additional juvenile justice placement slots, including juvenile detention, intensive day treatment, residential treatment, sex offender treatment, and boot camps (Florida Department of Juvenile Justice, 1995).

Idaho: A "Balanced Approach"

The legislative intent of the Juvenile Corrections Act of 1995 states that the juvenile correctional system will be based on accountability, community protection, and competency development. A sentence should "protect the community, hold the juvenile accountable for his or her actions and assist the juvenile in developing skills to become a contributing member of a diverse community." Parents or guardians will participate in the accomplishment of these goals through participation in counseling and treatment designed to develop positive parenting skills and an understanding of the family's role in the juvenile's behavior. Furthermore, parents or guardians will be held accountable through monetary reimbursement for

supervision and confinement of the juvenile offender and restitution to victims. The juvenile correctional system should encompass day treatment, community programs, observation assessment programs, probation services, secure facilities, aftercare, and assistance to counties for juveniles not committed to the custody of the newly created Department of Juvenile Corrections.

Minnesota: A Preservation of Elements That Were Working Plus New Options for Serious Juvenile Offenders

In January 1994, the Advisory Task Force on the Juvenile Justice System of the Minnesota Supreme Court made a series of recommendations for significant changes in Minnesota's juvenile justice system. These recommendations were based on a year-long comprehensive look at Minnesota's juvenile justice system. The recommendations also reflected some fundamental assumptions regarding juvenile justice in Minnesota, including:

- Juvenile justice interventions are not the solution to the increase in serious juvenile crime; rather, the solution lies in the strengthening of families and communities and the implementation of prevention and early intervention programs.
- The juvenile justice system should provide a continuum of supervision and appropriate programming that meets the needs of juvenile offenders, provided in the least restrictive environment that is consistent with public safety.

The task force recognized early on that it was the serious and repeat juvenile offenders for whom the juvenile justice system was not working. As a result, the bulk of the task force recommendations were geared toward (1) preserving the elements of the juvenile justice system that were working for the less serious offenders and (2) designing recommendations that would target the serious and repeat juvenile offenders. The most significant task force recommendations in response to serious and repeat offenders included the following:

- A more relaxed concept of presumptive waiver.
- The creation of a new offender category, the Serious Youthful Offender (which became the extended jurisdiction juvenile [EJJ] category).
- The use of juvenile offense history in adult sentencing.
- Assignment of full adult points to felonies committed by Serious Youthful Offenders.
- Increased physical security throughout Minnesota's public and private juvenile correctional facilities.

Many of the recommendations of the task force were ultimately incorporated into Minnesota's 1994 criminal justice and crime prevention bill, which included the following provisions:

- Easing school access to juvenile data.
- Providing each county board the authority to establish countywide curfews.
- Implementing sex offender registration for juveniles committing sex offenses that would be crimes if committed by adults.
- Relaxing requirements for transferring juveniles to adult jurisdiction.
- Imposing stiffer penalties for juvenile offenders, including mandatory minimum sentences.

Perhaps the most far-reaching provision of the 1994 legislation was the designation of EJJ's. Effective January 1, 1995, serious and repeat juvenile offenders became eligible for the EJJ designation, a "last-chance" option for 14- to 17-year-old offenders found guilty of selected offenses. Extended jurisdiction juveniles receive a juvenile court disposition and a stayed adult sentence. If the juvenile violates the condition of the juvenile disposition or commits another crime, the adult sentence can be imposed. The juvenile court also maintains jurisdiction over EJJ-designated offenders until age 21 (versus age 19 for other non-EJJ offenders).

New Mexico: A Definition of the Appropriate Population for the Juvenile Court

As reenacted, New Mexico's Children's Code is a balanced response to concerns surrounding violent crime by juveniles. The Code created three categories of juvenile offenders: serious youthful offenders, youthful offenders (see chapter 3), and delinquent offenders. Legislation that created the categories preserved the intent of the Children's Code while removing offenders no longer amenable to the programs of the juvenile justice system (Schwartz et al. 1995). The legislation further preserved the concept of individualized case decisions and endorsed the philosophy that juvenile offenders should receive rehabilitation and treatment and be held accountable for their actions.

A task force created by the New Mexico Council on Crime and Delinquency, a nonprofit advocacy group, drafted the legislation and obtained consensus among system actors prior to its submission. Most legal actions involving children have been moved into the Children's Code, which covers delinquency, families in need of services (FINS), abuse and neglect, adoption, and children's mental health. The code also contains new material relating to Native American children.

Pennsylvania: A Continuous Examination of Needed Changes

Following a campaign promise, the Governor called for a special legislative session on crime the day after his inauguration in January 1995. The executive branch was fully involved in the debate and presented initial proposals for consideration. At the same time, two other groups strongly advocated their positions. The Juvenile Court Judges' Commission (JCJC), a State agency charged with a wide range of responsibilities for supporting juvenile courts, and the District Attorney's Association saw an opportunity to present reforms of their own. The result of these efforts included amendments that:

- Allowed the dissemination of juvenile fingerprints among law enforcement agencies.
- Eliminated automatic expungement of juvenile records.
- Opened juvenile court proceedings to the public for certain felony cases.
- Required the presence and participation of parents and guardians in court-ordered programs and proceedings for juveniles.
- Required dissemination of information about adjudicated juveniles to school principals and personnel.
- Provided for the direct filing of juveniles charged with violent crimes to criminal court and the automatic exclusion of juveniles ages 15 and older for certain crimes committed with a deadly weapon or for repeated serious crimes.

Another significant amendment to the Juvenile Act was a redefinition of the purpose of juvenile justice interventions, which states that programs for delinquents should "provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community" (Juvenile Court Act, 42Pa.C.S.A., Sec. 6301). Prior to 1995, the focus had been on the juvenile's condition, as opposed to his behavior or alleged crime, and on treatment and rehabilitation that were in his best interests and would protect the community.

To combat juvenile violence at the front end, the Governor established the Children's Partnership to assist local communities in establishing effective programs and services to reduce and prevent violence by and against children and youth. The Partnership makes recommendations for policy development, resource identification and allocation, and technical assistance.

A Pennsylvania House Resolution passed in May 1995 directed a legislative committee to assess the existing system of public and private programs for juvenile delinquents as well as county and State roles and responsibilities with respect to juvenile justice matters. The final report identified a number of concerns and recommendations for the Pennsylvania Commission on Crime and Delinquency (PCCD), the State planning agency; the General Assembly; the Department of Public Welfare, the agency responsible for delinquency programs; and the JCJC (Legislative Budget and Finance Committee, 1996). The overriding recommendation was to create one centralized planning body, specifically the PCCD, to take the lead in coordinating juvenile justice policy for the State.

Tennessee: Legislation Monitored and Informed Positions Organized

A children and youth commission tracked legislation and, with the support of juvenile justice professionals from across the State, organized well-informed positions on legislation. For example, between 1994 and 1995, this commission organized positions on 72 bills and helped to either defeat the bill or redraft it in 90% of those instances (Haynes, 1995). Tennessee also passed some tough legislation to address chronic and violent delinquency.

In 1995, the legislation permitted juveniles of any age to be transferred by judicial waiver for certain serious or violent offenses to criminal court for prosecution. Although this measure dramatically increased the number of juveniles eligible for transfer to criminal court, it preserves and enhances the juvenile court judges' jurisdiction to decide which offenders are amenable to juvenile justice resources and which juveniles are better handled by the criminal justice system.

Tennessee also passed laws on juvenile curfew, after-school programs, access to handguns, penalties for weapon offenses, once waived/always waived provisions, records access, and fingerprinting.

Texas: A Statewide Assessment Prior to Passing Legislation

Texas supported the discussion of juvenile justice policy reform with a comprehensive review of its entire Family Code (Harris and Goodman, 1994). The study was initiated because "the increasing rate of juvenile violent crime and changing family structure demonstrated a desperate need for the [Texas] Family Code to be reviewed and updated." The study, commissioned by a 1993 resolution, required months of research, investigation, and public hearings, the results of which were released in November 1994. During the statewide assessment, many proposals for reform were offered and, as in other States, many suggestions were extreme responses to public fear over violent juvenile crime. By collecting opinions from a wide audience across the State and informing those opinions and the questions they generated with the best available professional knowledge in the State and Nation, the Texas legislature encouraged a reasoned reform debate in 1995 that nonetheless features some of the Nation's toughest responses to violent juvenile crime.

Effective in January 1996, an enhanced juvenile determinate sentencing act authorizes juvenile court judges to dispose of certain violent offenses or habitual offenders with a fixed sentence of up to 40 years (see chapter 3 for details). The legislature also lowered the age for judicial waiver and established a once waived/always waived provision.

The major thrust of the legislative changes was to make the juvenile justice system more severe, with more criminal process, public scrutiny, and adult penalty for juvenile crime—all this without destroying the fundamental differences between the juvenile and criminal systems (Dawson, 1995). The two systems are still very different because the reforms, for the most part, guarded the juvenile court judges' jurisdiction regardless of a juvenile's current offense, prior history, or age. Moreover, the legislation provided significant resources to enhance elements of the juvenile system, including new State and local secure facilities, more probation officers, and program enhancements and additional capacity for the Texas Youth Commission (TYC).

A significant thrust of the 1995 legislation encourages local juvenile courts to establish a seven-step system of progressive juvenile sanctions. The legislation allocated additional funds to achieve the goals of the progressive sanctions system, including:

- Ensuring that offenders face uniform and consistent consequences and punishments that correspond to the seriousness of each current offense, delinquent history, special treatment or training needs, and effectiveness of prior interventions.
- Balancing public protection and rehabilitation while holding offenders accountable.
- Permitting flexibility in the decisions made in relation to the offender, to the extent allowed by law.
- Considering the offender's circumstances.
- Improving planning and resource allocation by ensuring uniform and consistent reporting of disposition decisions at all levels (Dawson, 1995).

Texas also enhanced early intervention efforts for juveniles at risk for chronic delinquency and increased parental involvement in the juvenile justice system. The latter reform grants juvenile court judges the authority to order parents to perform up to 500 hours of community service as a condition of their child's probation. The 1995 reform also addressed victim rights, juvenile boot camps, youth curfews, records and record sharing, and job skills for juvenile offenders. It opened juvenile court hearings to the public and mandated the TYC to annually review the effectiveness of its programs and biennially develop coordinated strategic plans with the Texas Juvenile Probation Commission.

References

Dawson, R. O. (ed.). *Texas State Bar Section Report on Juvenile Law: Special Legislative Issue*, 9(3) (August 1995).

Florida Department of Juvenile Justice. *1995 Legislative Session Wrap-Up Report*. Tallahassee, FL (no date).

Frith, M. *Final Report: A Summary of the 1994 Juvenile Justice Reform Bill*. Tallahassee, FL: Florida Senate Select Committee on Juvenile Justice Reform, September 1994.

Harris, C. and T. Goodman. *A Comprehensive Review of the Texas Family Code. Joint Interim Committee on the Family Code, Final Report to the 74th Legislature*. Austin, TX: Texas Legislative Council, November 1994.

Haynes, W. C., Juvenile Justice Director, Tennessee Commission on Children and Youth. Telephone conversation, November 1995.

Judicial Branch/Department of Children and Families/ Office of Policy and Management. *Juvenile Justice Reorganization Plan*. Hartford, CT, February 1, 1996.

Langton, M. (Chair). *1993 Annual Report to the Legislature.* Tallahassee, FL: Florida Legislature Commission on Juvenile Justice, December 1993.

Lawlor, M. "Connecticut's Juvenile Justice Reform Package." Hartford, CT: House of Representatives, undated memorandum.

Legislative Budget and Finance Committee. *A Review of Juvenile Justice Programs and Services in Pennsylvania.* Harrisburg, PA: Pennsylvania General Assembly, January 1996.

Lyons, D. "Juvenile Crime and Justice State Enactments 1995." *State Legislative Report,* 20(17)(November 1995).

Minnesota Supreme Court. *Advisory Task Force on the Juvenile Justice System: Final Report.* St. Paul, MN, 1994.

Schwartz, I. et al. *A Study of New Mexico's Youthful Offenders.* Philadelphia, PA: Center for the Study of Youth Policy, January 1995.

Tanner, C. H., Staff Attorney, Arkansas Administrative Office of the Courts. Telephone conversation, October 1995.

Wilson, J. and J. Howell *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.* Washington D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1993.

Chapter 8

Summary

The legal, professional, and practical investigation conducted to produce this report has provided a number of recurrent themes that exist among the States and the District of Columbia. While not the result of any planned or guided activity, there is more commonality than difference in the composite of change produced by legislative and executive action over the past 4 years. In viewing that change as a whole, it is clear that juvenile justice systems in the United States are significantly different than they were in 1992 and that the direction and pace of change suggest a new paradigm for the legal response to juvenile crime, particularly violent or other serious juvenile crime.

Change Is Everywhere

Since 1992, legislative activity has produced revisions to the laws concerning juvenile crime in more than 90% of the States. A review of laws regarding jurisdiction, sentencing, correctional programming, information sharing, and the role of victims reveals that 47 States and the District of Columbia have made substantive changes in the past 4 years. In many States, change has occurred in each of the past four legislative sessions. Moreover, more rapid and sweeping change has occurred in 1995 and continues to accelerate.

This level of legislative activity has occurred only three other times: at the outset of the "juvenile court movement" at the turn of the century, following the U.S. Supreme Court's Gault decision in 1967, and with the enactment of the Juvenile Justice and Delinquency Prevention Act in 1974.

Not only has the pace of legislative activity increased, but respondents contacted throughout the course of this investigation indicated that the tenor of debate surrounding this change has escalated as well. In many States, legislative activity followed a period of intense political rhetoric that compelled action in order to "curb juvenile violence." In many instances, individual vignettes portraying a single incident served as the focus for legislative motivation. Whether justified or not, this period of change in the juvenile justice system has been accompanied by a heightened awareness of and commitment to reform.

Change Will Affect Minority Juveniles

Research has demonstrated a pattern of differential processing of minorities at various stages of the juvenile justice process (see Pope and Feyerherm, 1993). Minority juveniles are more likely to be involved with the juvenile justice system. Furthermore, race affects case processing either directly or indirectly, and these effects may be cumulative as minorities move deeper into the juvenile justice system. For example, 15% of juveniles ages 10–17 in the United States in 1991 were African American, but they represented:

- 26% of all arrests of juveniles in that year.
- 49% of juveniles arrested for Violent Crime Index Offenses.
- 32% of delinquency referrals to juvenile court.
- 42% of referrals for person offenses.
- 44% of cases adjudicated for person offenses.
- 52% of all cases waived by juvenile courts (see Snyder and Sickmund, 1995, p. 91).

New laws targeting violent or other serious crimes committed by juveniles are likely to have a significant impact on minority offenders. Because minorities are already overrepresented in the crime categories targeted by these new laws (e.g., serious and violent offenses, particularly those involving weapons, and juveniles with more extensive histories), it follows that these laws will have a disproportionate impact on minorities. Moreover, the cumulative effects of these changes, particularly the once waived/always waived provisions, could be quite dramatic. State legislatures should monitor the impact of new laws targeting violent juvenile crime to determine the effects on disparity and the aspects of the legislation that enhance disparity.

Change Is Consistent

A review of the collective impact of reams of legislative and practical change reveals one predominant theme: The nature of justice for a subset of juveniles now involves an increased eligibility for criminal, rather than juvenile, court processing and adult correctional sanctions. In each of the areas reviewed for this report (jurisdiction, sentencing, correctional programming, information sharing, and victim involvement), the underlying intent of change was to ease and support the State's decision to punish, hold accountable, and incarcerate for longer periods those juveniles who had, by instant offense or history, passed a threshold of tolerated "juvenile" criminal behavior. Although the intent and direction of changes are consistent across the States, there is significant variation in the methods chosen to accomplish the goal of change. Each State has changed its juvenile justice system as it sees fit, given its unique juvenile crime problem, juvenile population, and resources.

Inherent in these decisions is the belief that serious and violent juvenile offenders must be held more accountable for their actions. In many instances, accountability is defined as punishment, or a period of incarceration, with less attention paid to the activities to be accomplished during that incarceration. The imposition of mandatory minimum sentences, sentencing guidelines, and extended jurisdiction are intended not only to hold an offender accountable but also to incapacitate an offender for an extended period of time, thus enhancing public safety.

Legislative change that involves the sharing of information supports these decisions by more accurately defining, tracking, and identifying those individuals for whom more accountability is desired. The use of juvenile records for criminal prosecution, information sharing with schools, and public awareness of juvenile criminal behavior and its consequences are all intended to "tighten the web" of information around this subset of offenders. At the same time, openness of court proceedings has the potential to decrease the publicly held mistrust of the juvenile court system.

Decisionmaking Roles Are Changing

Decisions regarding the processing of cases involving juvenile crime have traditionally been distributed among three primary entities: the legislature, the prosecutors, and the judiciary. As new plans are drawn for decisionmaking involving serious and violent juvenile offenders, the relative authority of these players in the justice system is shifting.

Judicial waiver, long the primary mechanism for transferring jurisdiction of a violent or other serious juvenile crime case to the criminal court has, in the past 4 years, been weakened in relation to other mechanisms. What was once almost the exclusive domain of the juvenile court judge is now shared more broadly by the prosecutor and the direct action of the legislature. This shift in authority has been accompanied by a prevailing sentiment that juvenile court judges are too "soft" on juvenile crime; that even though they have discretion, more direct action must be taken to hold serious offenders accountable; and that nonjudicial decisions are more likely to produce that outcome. Judicial waiver, while still available in all but four States, is regarded by many as a less-than-effective process to ensure sanctions seen as desirable by the public at large.

Replacing the authority of the court has been the growing responsibility of the prosecutor to make these decisions. Either directly (through provisions that allow for discretion in choosing the court in which cases of serious juvenile crime are filed) or indirectly (in the authority to determine which charges shall be presented for prosecution), prosecutors have inherited a significantly increased share of this decisionmaking.

The debate that has surrounded this part of justice reform has been largely defined by arguments as to who, or what venue, is the most appropriate for a decision to treat a serious juvenile offender as an adult. Both judges and prosecutors have asserted that their piece of the system is best suited to make a meaningful and just decision. Others, taking a longer view, have posited that either the judge or the prosecutor is preferable to direct legislative action in that individualized decisionmaking is preserved. To these observers, the least desirable outcome is to establish a "class" of offenders for whom a specific intervention is prescribed without knowing any details of the alleged offense or the parties involved. Others have argued against this position by suggesting that any discretion in these matters is too much. What has resulted is a great deal of variation among the States.

Change Involves Secure Placement

With few exceptions, changes in the sentencing and correctional programming options available to the court have been in the direction of increased residential (often secure) placement of serious and violent juvenile offenders without comparable attention to community corrections, including probation or aftercare.

Legislators have equated holding serious and violent juvenile offenders accountable with increasing the availability and likelihood of secure placement, often for increased periods of time. This model, equating time spent in secure holding with accountability paid, is a direct transfer from adult corrections policy, including sentencing guidelines, mandatory minimum sentences, and restrictions on parole and release. Additional change has occurred in this area with increased authority for the court or corrections agency to hold serious and violent juvenile offenders past the extended age of jurisdiction for dispositional purposes.

The notion of accountability in the juvenile justice system encompasses not only sanctions but also restoration in terms of restitution, victim reparation, and community service. Since many legislatures have made accountability synonymous with punishment, less attention has been paid to the role of community corrections, especially probation, in holding serious juvenile offenders accountable for their actions. Similarly, there is little legislative or practice change that specifically delineates the role of aftercare or juvenile parole in the continuum of sanctions for serious offenders. While known to be a critical component of

correctional programming, this area has been left for future consideration as States attempt to implement new sentencing schemes.

Change Precedes Capacity

Legislative prescriptions for increased criminal justice sanctions for serious and violent juvenile offenders have, in many instances, anticipated resources and capacity that do not exist. Secure holding will require additional residential capacity, pretrial holding will need additional resources, prosecutorial involvement will require additional staffing, information sharing assumes reliance on nonexistent or underdeveloped information systems, and criminal court docket time is not available to handle increased caseloads.

In many instances, the resources necessary to accomplish the legislative intent are not in place. This leaves an immediate situation in which the system will be forced to "make do" with existing capacity while additional funding and capacity are provided.

In the near term, the confusion surrounding the inability of the system to perform as intended by changes in law will confuse the understanding of the impact of those changes. Without the capacity to do as prescribed, practitioners will improvise solutions that are likely to differ from each other. Moreover, even where there have been adequate provisions for funding, there often does not exist the technical assistance or training at the State and local levels to support the development of either the physical capacity or the programmatic capacity outlined by the changes.

Change Is Not Tested

Much of the change described in this document has resulted from public perceptions of the escalation of violent juvenile crime and the accompanying political reaction to that perception. The necessity was "to do something." In response, legislative and executive solutions have been drawn that rely on expanding existing systems of corrections and translating adult interventions for serious and violent juvenile offenders.

In most instances, the reliance on these changes in response to violent juvenile crime has not been based on evidence that clearly demonstrates the efficacy of the intervention. The notion of criminal justice sanctions for serious and violent juvenile offenders stands, therefore, on its own merit; it is worth doing, even if it is not clearly demonstrated that it will produce a lasting and positive change in behavior.

In tracking the impact of these broad and sweeping changes, it will be necessary to address outcome and, in a reasoned way, to possibly modify our beliefs—and the interventions that follow—on the basis of that investigation. It may be that there is significant merit in some or all of the strategies adopted during the past 4 years; it may also be that there is not. Public concern about violent juvenile crime will only increase if it appears that the efforts made to curb it are ineffective.

References

Pope, C. and W. Feyerherm. *Minorities and the Juvenile Justice System. Final Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1991.

Snyder, H. and M. Sickmund. *Juvenile Offenders and Victims: A National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1995.

*U.S. Government Printing Office: 1998 — 417-741/40036

Publications From OJJDP

Delinquency Prevention

Combating Violence and Delinquency: The National Juvenile Justice Action Plan. 1996, NCJ 157105 (36 pp.).

Combating Violence and Delinquency: The National Juvenile Justice Action Plan (Full Report). 1996, NCJ 157106 (200 pp.).

Delinquency Prevention Works. 1995, NCJ 155006 (74 pp.).

Family Life, Delinquency, and Crime: A Policymaker's Guide. 1994, NCJ 140517 (65 pp.).

Family Strengthening in Preventing Delinquency—A Literature Review. 1994, NCJ 150222 (76 pp.), $13.00.

Matrix of Community-Based Initiatives. 1995, NCJ 154816 (51 pp.).

Strengthening America's Families: Promising Parenting Strategies for Delinquency Prevention. 1993, NCJ 140781 (105 pp.), $9.15.

What Works: Promising Interventions in Juvenile Justice. 1994, NCJ 150858 (248 pp.), $19.00.

Missing and Exploited Children

Addressing Confidentiality of Records in Searches for Missing Children (Full Report). 1995, NCJ 155183 (284 pp.), $15.00.

The Compendium of the North American Symposium on International Child Abduction: How To Handle International Child Abduction Cases. 1993, NCJ 148137 (928 pp.), $17.50.

Missing, Abducted, Runaway, and Thrownaway Children in America. First Report: Numbers and Characteristics, National Incidence Studies (Full Report). 1990, NCJ 123668 (251 pp.), $14.40.

Obstacles to the Recovery and Return of Parentally Abducted Children. 1994, NCJ 143458 (21 pp.).

Obstacles to the Recovery and Return of Parentally Abducted Children (Full Report). 1993, NCJ 144535 (877 pp.), $22.80.

Parental Abductors: Four Interviews (Video). 1993, NCJ 147866 (43 min.), $12.50.

Using Agency Records To Find Missing Children: A Guide for Law Enforcement. 1995, NCJ 154633 (20 pp.).

Status Offenders

Curfew: An Answer to Juvenile Delinquency and Victimization? 1996, NCJ 159533 (11 pp.).

Unlocking the Doors for Status Offenders: The State of the States. 1995, NCJ 160803 (85 pp.), $16.50.

Law Enforcement

Law Enforcement Custody of Juveniles (Video). 1992, NCJ 137387 (31 min.), $13.50.

Law Enforcement Policies and Practices Regarding Missing Children and Homeless Youth. 1993, NCJ 145644 (25 pp.).

Law Enforcement Policies and Practices Regarding Missing Children and Homeless Youth (Full Report). 1993, NCJ 143397 (217 pp.), $13.00.

Courts

The Child Victim as a Witness, Research Report. 1994, NCJ 149172 (143 pp.).

Helping Victims and Witnesses in the Juvenile Justice System: A Program Handbook. 1991, NCJ 139731 (282 pp.), $15.00.

How Juveniles Get to Criminal Court. 1994, NCJ 150309 (5 pp.).

Juvenile Court Statistics 1993. 1995, NCJ 159535 (98 pp.).

Offenders in Juvenile Court, 1993. 1996, NCJ 160945 (12 pp.).

Gangs

Gang Suppression and Intervention: An Assessment (Full Report). 1994, NCJ 146494 (197 pp.), $15.00.

Gang Suppression and Intervention: Community Models. 1994, NCJ 148202 (26 pp.).

Gang Suppression and Intervention: Problem and Response. 1994, NCJ 149629 (21 pp.).

Rising Above Gangs and Drugs: How To Start a Community Reclamation Project. 1995, NCJ 133522 (264 pp.).

Corrections

American Probation and Parole Association's Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies. 1992, NCJ 136450 (163 pp.).

Conditions of Confinement: Juvenile Detention and Corrections Facilities. 1994, NCJ 141873 (16 pp.).

Desktop Guide to Good Juvenile Probation Practice. 1991, NCJ 128218 (141 pp.).

Effective Practices in Juvenile Correctional Education: A Study of the Literature and Research 1980–1992. 1994, NCJ 150066 (194 pp.), $15.00.

Improving Literacy Skills of Juvenile Detainees. 1994, NCJ 150707 (5 pp.).

Intensive Aftercare for High-Risk Juveniles: An Assessment (Full Report). 1994, NCJ 144018 (195 pp.), $15.00.

Intensive Aftercare for High-Risk Juveniles: A Community Care Model. 1994, NCJ 147575 (20 pp.).

Intensive Aftercare for High-Risk Juveniles: Policies and Procedures. 1994, NCJ 147712 (28 pp.).

Juvenile Correctional Education: A Time for Change. 1994, NCJ 150309 (3 pp.).

Juvenile Detention Training Needs Assessment. 1996, NCJ 156833 (60 pp.).

Juvenile Intensive Supervision: An Assessment (Full Report). 1994, NCJ 150064 (89 pp.), $13.00.

Juvenile Intensive Supervision: Planning Guide. 1994, NCJ 150065 (80 pp.).

Juvenile Probation: The Workhorse of the Juvenile Justice System. 1996, NCJ 158534 (5 pp.).

Juveniles Taken Into Custody: Fiscal Year 1993 Report. 1995, NCJ 154022 (195 pp.).

National Survey of Reading Programs for Incarcerated Juvenile Offenders. 1993, NCJ 144017 (51 pp.), $6.75.

OJJDP: Conditions of Confinement Teleconference (Video). 1993, NCJ 147531 (90 min.), $14.00.

A Resource Manual for Juvenile Detention and Corrections: Effective and Innovative Programs. 1995, NCJ 155285 (164 pp.), $15.00.

General Juvenile Justice

Balanced and Restorative Justice. 1994, NCJ 149727 (16 pp.).

Breaking the Code (Video). 1993, NCJ 146604 (83 min.), $20.65.

Bridging the Child Welfare and Juvenile Justice Systems. 1995, NCJ 152155 (4 pp.).

Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. 1995, NCJ 153571 (6 pp.).

Innovative Community Partnerships: Working Together for Change. 1994, NCJ 146483 (32 pp.).

Juvenile Justice, Volume II, Number 2. 1995, NCJ 152979 (30 pp.).

Juvenile Offenders and Victims: 1996 Update on Violence. 1996, NCJ 159107 (32 pp.).

Juvenile Offenders and Victims: A National Report (Full Report). 1995, NCJ 153569 (188 pp.).

Law-Related Education for Juvenile Justice Settings. 1993, NCJ 147063 (173 pp.), $13.20.

Minorities and the Juvenile Justice System. 1993, NCJ 145849 (18 pp.).

Minorities and the Juvenile Justice System (Full Report). 1993, NCJ 139556 (176 pp.), $11.50.

Reducing Youth Gun Violence: An Overview of Programs and Initiatives. 1996, NCJ 154303 (74 pp.).

Study of Tribal and Alaska Native Juvenile Justice Systems. 1992, NCJ 148217 (208 pp.), $17.20.

Title V Incentive Grants for Local Delinquency Prevention Programs. 1996, NCJ 160942 (100 pp.).

Urban Delinquency and Substance Abuse: Initial Findings. 1994, NCJ 143454 (27 pp.).

Urban Delinquency and Substance Abuse: Technical Report and Appendices. 1993, NCJ 146416 (400 pp.), $25.60.

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